RSFSR CRIMINAL PROCEDURAL CODE, 1957 EDITION

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SUMMARY OF CONTENTS

RSFSR Criminal Procedural Code,
1957 Edition

This publication presents a translation of the RSFSR Criminal Procedural Code, 1957 edition, and its three appendixes (Legislative Acts, Annotations on Sections of the Code, and Regulations), all of which were published as Ugolovno-Protsessual'nyy Kodeks RSFSR by Gosudarstvennoye Izdatel'stvo Yuridicheskoy Literatury, Moscow, 1957 (signed to the printer on 6 July 1957). A topical index of the contents of the code is appended.

Pages 1 through 201

RSFSR CRIMINAL PROCEDURAL CODE, 1957 EDITION

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N O T E S

1. Principal Abbreviations Employed

The principal abbreviations of organization titles employed in the code and its appendixes are as follows:

Sovnarkom (Sovet Narodnykh Komissarov, Council of People's Commissars) USSR, RSFSR

TsIK (Tsentral'nyy Ispolnitel'nyy Komitet, Central Executive Committee) USSR

VTsIK (Vserossiyskiy Tsentral'nyy Ispolnitel'nyy Komitet, All-Russian Central Executive Committee) RSFSR

2. Use of Index

The structure of the RSFSR Criminal Procedural Code has necessitated employment in the index of a somewhat complex multiple reference system. The significance of each type of notation is explained at the head of the first page of the index.

RSFSR CRIMINAL PROCEDURAL CODE, 1957 EDITION**
(Basic Text of 1923)

**A single asterisk (*) appearing before the number of a section of this code indicates that an annotation on that section, of corresponding numeration, is appended.

Part 1

I. BASIC PROVISIONS

1. The procedure for conducting criminal cases in the judicial institutions of the RSFSR is prescribed by this code.

2. The criminal nature of and punishment for an act shall be determined by criminal legislation in force at the time when the crime is committed. Laws relieving an act committed of its criminal nature or mitigating punishment for it shall have retroactive effect.

Courts shall not suspend decision of cases on the pretext that applicable laws do not exist, are incomplete, are unclear, or conflict with each other.

3. Persons against whom court sentences have become final and executive shall not again be subjected to judicial prosecution for the same crime except in cases provided for in Sections 373, 374, 428, and 441 of the Criminal Procedural Code.

4. Criminal prosecution shall not be initiated, and if initiated shall not be continued and shall be subject to dismissal at any stage of proceedings, in the following cases:

(1) Upon the death of the accused, with the exception of cases provided for in Section 375 of the Criminal Procedural Code.

(2) Upon the reconciliation of the accused and the injured party, provided that prosecution was initiated solely by complaint (zhaloba) of the injured party, with the exception of cases specified in Sections 10 and 11 of the Criminal Procedural Code.

(3) In the absence of a complaint by the injured party in cases involving crimes the prosecution of which can be initiated solely by means of such a complaint.

(4) Upon expiration of the applicable period of limitation.

(5) When the criteria of a crime are absent from acts attributed to the accused.

(6) As a result of an act of amnesty, if such amnesty renders the act committed by the accused not subject to punishment, or of a pardon of particular persons, or of dismissal of cases by decree of VTsIK or its Presidium in accordance with the authority invested in it by law.**

**See Clause j, Section 49, of the USSR Constitution, and Clause g, Section 33, of the RSFSR Constitution.

4-a. Rescinded. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

5. No person shall be deprived of freedom and held in custody except in cases provided for by law and by the procedure established by law.

6. If any judge or prosecutor (prokuror) discovers that within his precinct or rayon someone is being held in custody in the absence of a legal resolution issued by organs empowered to do so, or is being detained beyond the term established by law or court sentence, he shall immediately free the person thus illegally confined.**

**The Law on the Judicial System of the USSR and of Union and Autonomous Republics does not make judges responsible for discharging these functions.

7. When any judge or prosecutor is informed that within his precinct or rayon someone is being confined in other than a proper place of confinement or under other than proper conditions, he shall take measures to reestablish legality.**

**The Law on the Judicial System of the USSR and of Union and Autonomous Republics does not make judges responsible for discharging these functions.

8. Prosecutors' offices shall prosecute charges in court. The injured party and other persons shall be granted the right to prosecute only in those cases where the right to do so is provided for by law.

9. Prosecutors' offices shall initiate criminal proceedings before judicial and investigative organs with regard to any crime committed and subject to punishment.

10. Cases involving the crimes covered by Paragraph 2 of Section 143; Paragraph 1 of Section 146; and Sections 159, 160, and 161 of the Criminal Code, shall be initiated only upon the complaint of the injured party, who shall have the right to prosecute the charge in these cases. Such cases shall be subject to dismissal upon the reconciliation of the injured party and the accused. Reconciliation shall be permitted only before the sentence becomes final and executive. Dismissal of these cases shall not be permitted on the basis of the note to Section 6 or of Section 8 of the Criminal Code.

If a prosecutor's office considers it necessary to enter such a case in order to protect the public interest, the charge shall be prosecuted only by the prosecutor's office and the case shall not be subject to dismissal upon the reconciliation of the injured party and the accused. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

11. Cases involving the crimes covered by Paragraph 1 of Section 153 and by Sections 177 and 178 of the Criminal Code shall be initiated only upon the complaint of the injured party, but shall not be subject to dismissal upon reconciliation of the parties. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

Note. Cases involving crimes which constitute survivals of the tribal way of life (Chapter X of the RSFSR Criminal Code) shall be initiated in the absence of a complaint by the injured party when the act committed contains the criteria stipulated in Section 153 of the Criminal Code. (RSFSR Laws 1928, Law No 356, dated 6 April 1928)

12. Civil court decisions which have become final and executive shall be binding on the criminal courts only in regard to the question of whether or not an event or act took place, and not in regard to the guilt of the person committed for trial.

13. Criminal court sentences which have become final and executive shall be binding on the civil courts on the questions of whether or not a crime was committed and whether or not it was committed by the person committed for trial shall be binding on the civil court which is adjudicating the civil consequences of the crime tried by the criminal court.

14. The injured party who has sustained damage or loss from a given crime shall have the right to file civil suit against the accused and against those persons who are materially liable for the acts of the accused. Such civil suits, irrespective of the amount involved, shall be tried together with the criminal cases, according to jurisdiction over the latter. (RSFSR Laws 1927, Law No 332, dated 6 June 1927)

15. Civil suits may be filed either at the beginning of a criminal case, during the pretrial investigation, or later, but not, however, after the trial has begun. Injured parties who do not file a civil suit while a criminal case is in process shall have the right to file a civil suit under the ordinary procedure.

Note. When a case has been adjourned, an injured party who has not filed civil suit may do so at the next hearing of the case.

16. A civil suit filed in the course of a criminal case shall not be subject to fees or taxes.**

**Not subject to state fees.

17. If a defendant dies before he has been sentenced and before the civil suit against him has been adjudicated, the latter shall be transferred for trial under ordinary civil procedure.

18. If a civil suit is decided against the plaintiff in the course of criminal proceedings, the injured party shall not have the right to reinstitute the same suit; likewise, if a civil suit instituted under civil procedure is decided against the plaintiff, the latter shall not have the right to institute the same suit in the course of criminal proceedings.

Note. Dismissal of a case on the grounds stated in the notes to Sections 6 and 8 of the Criminal Code shall not deprive the injured party of the right to receive compensation for losses caused by the acts of the person against whom criminal proceedings were instituted, and a civil suit which has, or could have been, instituted by the injured party may be transferred by him for trial under the rules of civil procedure. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

19. All judicial sessions shall be held in public. The courtroom may be cleared of the public for the entire session or for a part of it only on the basis of a court ruling setting out the reasons for the action, and then only in cases when it is necessary to safeguard military, diplomatic, or state secrets, or when crimes covered by Sections 151-154 of the Criminal Code are involved. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

20. Persons under 14 years of age shall not be permitted in the courtroom.

21. When a trial is held in secret, the sentence shall in all cases be made public.

22. Criminal cases shall be conducted in the Russian language or in the language of the majority of the population of the locality in question. When the accused, the injured party, the witnesses, or the expert witnesses do not know the language in which a given case is conducted, the court shall engage interpreters and keep the interested parties informed through an interpreter of every action taken by the court.

In these cases, the bill of charges and other documents shall be presented to the accused translated into the native language of the accused, and these shall be made public, if he so requests, also in his language. Papers and affidavits of any sort may be submitted to each of the interested persons in his native language if the court ascertains that these persons do not know the language in which the case in question is being conducted.**

**See Section 114 of the RSFSR Constitution.

23. The terms employed in this code shall be defined, in the absence of special instructions, as follows:

(1) The word "court" (sud) shall be construed to mean people's court, guberniya court, military tribunal, or Supreme Court.**

**The system and nomenclature of judicial and prosecution organs are provided for by Chapter X of the RSFSR Constitution. The guberniya courts referred to in this and subsequent sections of the code correspond to kray, oblast, and okrug courts.

(2) The word "tribunal" (tribunal) shall be construed to mean military tribunal.

(3) The word "judge" (sud'ya) shall be construed to mean people's judge or people's assessor, the chairmen and members of guberniya courts, the chairmen and members of military tribunals, and the chairman and members of the Supreme Court.

(4) The word "prosecutor" (prokuror) shall be construed to mean the Prosecutor of the Republic, deputies to the Prosecutor of the Republic, guberniya prosecutors and their deputies, and prosecutors attached to guberniya courts, military tribunals, the Supreme Court**, and the People's Commissariat of Justice.***

**The system and nomenclature of judicial and prosecution organs are provided for in Chapter X of the RSFSR Constitution. The guberniya courts referred to in this and subsequent sections of the code correspond to kray, oblast, and okrug courts.

***In accordance with a law adopted by the USSR Supreme Soviet on 15 March 1946, the Sovnarkom USSR was renamed Council of Ministers USSR, the people's commissariats of the USSR and of union and autonomous republics were renamed ministries, and people's commissars were accordingly renamed ministers (Vedomosti Verkhovnogo Soveta SSSR 1946, No 10). This change has not been incorporated in the text which follows.

(5) The term "pretrial investigator" (sledovatel') shall be construed to mean people's pretrial investigators, senior pretrial investigators attached to guberniya courts, pretrial investigators for cases of special importance attached to the People's Commissariat of Justice and the Supreme Court, and the pretrial investigators of military tribunals.**

**The system and nomenclature of judicial and prosecution organs are provided for in Chapter X of the RSFSR Constitution. The guberniya courts referred to in this and subsequent sections of the code correspond to kray, oblast, and okrug courts.

(6) The word "parties" (storony) shall be construed to include the prosecutor who prosecutes the charge, the plaintiff in a civil suit and the representatives of his interests, the accused, his lawful representatives, and his defense counsel, and, in those cases in which he is granted the right to prosecute the charge, the injured party and the representatives of his interests.

(7) The term "legal representatives" (zakonnyye predstaviteli) shall be construed to include parents, adoptive parents, and guardians, and the representatives of those institutions and organizations under whose care the person in question has been placed. (RSFSR Laws 1928, Law No 37, dated 20 December 1927)

(8) The term "close relatives" (blizkiye rodstvenniki) shall be construed to include husband, wife, father, mother, sons and daughters, and natural brothers and sisters.

(9) The word "sentence" (prigovor) shall be construed to mean a decision delivered by a court in judicial session on the question of the guilt or innocence of the accused.

(10) The word "ruling" [or order] (opredeleniye) shall be construed to mean all other decisions delivered by a court in judicial or executive** session, and all decisions delivered by appelate courts.

**See the footnote to Section 332.

(11) The word "resolution" [or "decision"] (postanovleniye) shall be construed to include all actions of pretrial investigators except the following: official certifications (akty) relative to searches, seizures, and examinations of persons (osvidetel'stvovaniya), the interrogation of the accused, of witnesses, and of expert witnesses, and the bill of charges; the word "resolution" shall also be construed to include [all] actions of prosecutors except the following: motions for dismissal of cases, for the adoption, revocation, or alteration of measures to prevent evasion of justice, and for summoning witnesses and expert witnesses to judicial sessions, objections to decisions of investigators on the dismissal of cases, and motions concerning the conduct of police inquiries and pretrial investigations.

(12) The term "court of original jurisdiction" (sud pervoy instantsii) shall be construed to mean people's courts, judicial divisions of guberniya courts, the Criminal Judicial Collegium of the Supreme Court, and military tribunals.

The term "appelate court" (sud vtoroy instantsii) shall be contrued to mean the appelate divisions of guberniya courts and the appellate collegiums of the Supreme Court.

(13) The term "Supreme Court" (Verkhovnyy sud) shall be construed to mean the Supreme Court RSFSR. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

II. JURISDICTION

*24. When trying criminal cases, a people's court shall consist: (a) of a single people's judge;** or (b) of a people's judge and two assessors.***

**See Sections 9 and 14 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" (pp 101-102).

***For the jurisdiction of a kray (oblast) court, see appended annotation on Section 24; see also Section 21, 32, and 40 of the "Law on the Judicial System of the USSR and Union and Autonomous Republics."

25. A single people's judge, acting by summary judgment, may try only cases involving crimes covered by Sections 64, 92, 185, 186, 187, 189, 190, and Paragraph 1 of Section 191 of the Criminal Code.** All other cases that are subject to the jurisdiction of people's courts shall be tried by a court composed of a people's judge and two people's assessors. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

**The "Law on the Judicial System of the USSR and of Union" and Autonomous Republics does not provide for the decision of criminal cases by summary judgment.

26. Rescinded. (RSFSR Laws 1932, Law, No 171, dated 1 April 1932)

26-a. Rescinded. (RSFSR Laws 1932, Law No 171, dated 1 April 1932)

*27. The jurisdiction of military tribunals shall be determined by the "Statute on Military Tribunals and the Office of the Military Prosecutor." (RSFSR Laws 1928, Law No 709, dated 27 August 1928)

28. The jurisdiction of water transport courts** shall be determined by the decree of the TsIK and Sovnarkom USSR dated 7 June 1934, "On the Organization of Water Transport Courts and the Office of the Water Transport Prosecutor." (USSR Laws 1934, Law No 25; USSR Laws 1935, Law No 150; RSFSR Laws 1936, Law No 87, dated 20 May 1936)

**A law passed by the Supreme Soviet USSR on 12 February 1957 abolished transport courts. (See pp 122-123).

28-a. In places situated at a great distance from the location of water transport courts**, water transport crimes shall be tried in the appropriate general courts. A list of these localities shall be established by the Supreme Court USSR jointly with the Office of the Prosecutor USSR and the Supreme Court RSFSR. Such of these cases as are appealed or reopened ex officio shall be heard by the Water Transport Collegium of the Supreme Court USSR.**

**See footnote to Section 28.

*29. Each case shall be tried by the court in the area of jurisdiction (rayon) of which the crime was committed. If it is impossible to determine the place in which a crime was committed, the case shall come under the jurisdiction of the court in the area of jurisdiction of which the criminal prosecution is initiated.

Note. Precinct (uchastok) boundaries and the areas of jurisdiction (rayony) of people's judges shall be determined by guberniya courts within the latter's areas of jurisdiction. Guberniya courts may assign a people's judge in any precinct to try all the cases in a certain category arising in the entire area of jurisdiction of the guberniya court in question.

30. A case may be transferred from one court to another court of the same type only when a more dispassionate, more rapid, and more complete trial of the case would result from the transfer.

31. The question of transferring cases from one people's court to another area of jurisdiction of the same guberniya court shall be decided by the latter. The questions of transferring cases to a people's court of another area of jurisdiction [i.e., not of the same guberniya court] or to a court of another category shall be decided by the Supreme Court RSFSR, except in cases covered by Note 2 to Section 26 of this Code.** (RSFSR Laws 1927, Law No 175, dated 7 March 1927)

**The end of this section, which reads "except in cases covered by Note 2 to Section 26 of this Code," became void when Section 26 was rescinded.

32. The questions of transferring cases from one guberniya court to another guberniya court, or from a guberniya court to a military tribunal, shall be decided by the Criminal Appeals Collegium of the Supreme Court. The question of transferring cases from one military tribunal to another military tribunal or to a guberniya court shall be decided by the Military Collegium of the Supreme Court USSR (Section 16, Clause e, "Statute on the Supreme Court USSR**." (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

**The Statute on the Supreme Court USSR of 23 November 1923 was rescinded by a decree of the TsIK and Sovnarkom USSR of 24 July 1929.

33. Cases which are simultaneously subject to the jurisdiction of two or more courts of the same category, because of the presence of more than one accused or for other reasons, shall be tried by the court in the area of jurisdiction of which the case was initiated.

34. Cases based on charges of several crimes committed by the same person, although at different places, may be combined into a single proceeding and tried by the court in whose area of jurisdiction the case was initiated.

35. If a case involves charges of several crimes or charges against several accused persons, and one or more crimes or accused persons falls under the jurisdiction of a people's court and others under the jurisdiction of a guberniya court, all crimes involved in the case shall be under the jurisdiction of the guberniya court.

36. If a case involves charges of several crimes or several accused persons, and one or more crimes or accused persons falls under the jurisdiction of a guberniya court and others under the jurisdiction of a military tribunal, all crimes involved in the case shall be tried by the military tribunal. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

37. Rescinded. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

38. Rescinded. (RSFSR Laws 1936, Law No 1, dated 25 November 1935)

39. No court, having ascertained that a case being conducted by it is under the jurisdiction of another court of the same category, shall proceed with the case unless it has already begun an examination of evidence in the course of the trial or unless neither of the parties to the case object.

40. Cases transferred from one court to another in accordance with the preceding section shall be tried unconditionally in the court to which they are transferred, and no jurisdictional dispute between courts shall be permitted. If a court receives a case which in its opinion has been transferred to it incorrectly, the question of the transferral may be submitted by it ex officio to the next higher court, but not before sentence has been pronounced in the case.

III. COMPOSITION OF COURTS, PARTIES, AND CHALLENGES

*41. Only persons appointed or elected in the manner prescribed by law shall serve as judges. Judges who are relatives shall not serve together on any court.

42. A case, whether tried in judicial or executive session, shall be heard by the same judges; if any of the judges is for any reason unable to continue to sit on a case, he shall be replaced by another judge and the entire case shall be heard again from the beginning.

Note. If an alternate people's assessor who has been present in the courtroom replaces a people's assessor who has retired from the case and does not request a reopening of the judicial and investigative proceedings, the case shall continue without a rehearing.

43. A judge shall not participate in a trial, either in executive or judicial session, in the following instances:

(1) If he is a party to the case or related to one of the parties;

(2) If he or one of his relatives has an interest in the outcome of the case;

(3) If he has participated in the case as a witness, expert witness, police inquiry agent, pretrial investigator, prosecutor, counsel for the defense, or representative of the interests of the injured party or of the civil plaintiff in the case.

**44. Any judge who takes part in the determination of the sentence in a court of original jurisdiction shall not participate in a review of the same case, whether in an appelate court or upon a retrial of the case in a court of original jurisdiction when the original sentence has been reversed.

45. When the grounds stipulated in Sections 41, 43, and 44 of the Criminal Procedural Code are present, a judge shall disqualify himself from the case; if he does not disqualify himself he may be challenged by one of the parties. Furthermore, a judge shall be subject to challenge when a party can show circumstances which cast doubt upon his impartiality.

46. A party may file a challenge no later than at the time of opening of the judicial session; challenges shall be permitted subsequently only if the grounds for the challenge became known to the court or to the person making the challenge after the judicial examination had begun.

47. Challenges filed against judges shall be ruled on by the other judges participating in the case in the absence of the judge under challenge; if the votes are tied, the judge who was challenged shall be considered disqualified.

48. The provisions of Sections 43 and 45 of the Criminal Procedural Code shall apply to the secretary of the judicial session, to interpreters, and to expert witnesses, provided, however, that previous participation of interpreters or expert witnesses in a case in the same capacity shall not be grounds for challenge. Challenges shall be ruled on by the court which is trying a given case.

49. The provisions of Sections 43 and 45 are equally applicable to prosecutors. The challenge must be filed immediately after a party becomes aware of grounds for challenge. The challenge shall be ruled on by the court which is trying the case. However, if the prosecutor participated in the police inquiry or pretrial investigation of the case in question, or if he conducted the prosecution, these circumstances shall not constitute grounds for challenge.

50. A case may be prosecuted by members of the Office of the Prosecutor, the injured party when empowered to do so by law, representatives of trade unions, labor inspectors, representatives of the Workers' and Peasants' Inspectorate**, the Technical Inspectorate, the Supply Inspectorate**, the Sanitary Inspectorate, and any other inspectorate on matters related to their jurisdiction. Other persons may be permitted to act as prosecutors in a case only pursuant to a special court ruling issued in either executive or judicial session on the case in question.

**Became inoperative in connection with the abolition of the Workers' and Peasants' Inspectorate and the Supply Inspectorate.

51. When the injured party is empowered to prosecute a criminal charge, the following persons may participate in the case as representatives of the interests of the injured party: members of a collegium of defense counsels**, close relatives of the injured party or his legal representatives, and representatives of trade unions and labor inspectors.

**Lawyers.

52. The interests of the plaintiff in a civil suit may be represented by the following: members of a collegium of defense counsels**, close relatives or legal representatives of the plaintiff, and other persons so empowered by special court ruling. If the plaintiffs are institutions or organizations, persons specially assigned and appropriately authorized may act as their representatives.

**Lawyers.

53. The following persons may participate in cases as counsel for the defense: members of a collegium of defense counsels**, close relatives of the accused, appointed representatives of state institutions and enterprises and of the All-Russian Central Council of Trade Unions, the All-Russian Central Union of Consumer Cooperatives, and other trade and public organizations. Other persons shall be empowered to do so only by special authorization of the court in which the given case is tried.

**Lawyers.

54. When a civil suit is filed in the course of criminal proceedings, the prosecutor may, if he deems it necessary, support it at all stages of the proceedings.

*55. The participation of defense counsel is required in trials of the following cases:

(1) Cases in which a prosecutor participates, provided that if the person committed for trial refuses defense counsel, the prosecutor shall not be barred;

(2) Cases involving mute persons, deaf persons, and, in general, persons whose physical defects make them incapable of correctly comprehending the proceedings.

56. Persons who participate in a case as witnesses shall not appear in the same case as a counsel for the defense, prosecutor, or representative of the interests of the injured party or of a civil plaintiff.

IV. EVIDENCE

57. Courts shall not be limited by any formal rules of evidence and shall have the power, according to the circumstances of the case, to accept any kind of evidence or to require it from third parties, for whom such a demand shall be obligatory. Oaths shall not be admitted as evidence.

58. Evidence comprises the testimony of witnesses (svideleli), the opinions of expert witnesses (eksperty), physical evidence, inspection records and other written documents, and the personal explanations of the accused.

59. The procedure for collecting, preserving, and examining physical evidence and written documents is prescribed by this code.

60. Any person summoned to appear as a witness must appear and state everything known to him regarding the case and answer all questions put to him by the pretrial investigator, police inquiry agencies, the court, and the parties to the case. If a witness refuses to testify before the pretrial investigator or the police inquiry agencies, the latter shall draw up a report (protokol) of the behavior of the witness and forward it to the nearest people's court. If a witness refuses to testify in court, the appropriate punishment shall be imposed directly by the court trying the case for which the person in question was summoned as a witness.

61. The following persons shall not be summoned and questioned as witnesses:

(1) The counsel defending the accused in the case in which he is performing that function;

(2) Persons who, as a result of physical or mental defects, are incapable of comprehending the significant elements of the case and of giving correct testimony about them.

Note. Expert witnesses may be summoned to resolve the question of the competency of a person to serve as a witness.

62. If a witness shall fail to appear without an acceptable explanation, the pretrial investigator, or the police inquiry agency, if a police inquiry shall have replaced the pretrial investigation, shall have the right to compel the defaulting witness to appear and simultaneously to adopt the same measures against those who willfully evade appearance as are provided for in Section 60 of the Criminal Procedural Code. If a witness shall fail to appear in court during the trial of a case, the same punishments may be imposed by the court that is trying the case for which the person in question was summoned to testify, without submitting his case to another court.

63. Expert witnesses shall be summoned to appear when special scientific, artistic, or professional knowledge is required for the investigation or trial of a case.

Note 1. Expert witnesses must be summoned to establish the cause of death and the nature of bodily injuries, and, in cases where a court or a pretrial investigator is in doubt on these questions, to establish the mental condition of the accused or witnesses.

Note 2. The procedure for summoning expert witnesses and the rendering of expert opinions in these cases shall be determined by special instructions issued by the People's Commissariat of Justice with the concurrence of the People's Commissariat of Health.

64. Persons summoned in the capacity of expert witnesses must appear and take part in the inspection and examination of persons and render opinions. If expert witnesses fail to appear without acceptable explanation, or should such expert witnesses refuse, without lawful grounds, to perform their duties, the same measures shall be imposed upon them as upon ordinary witnesses (Sections 60 and 62 of the Criminal Procedural Code).

*65. Witnesses and expert witnesses shall have the right to be reimbursed for expenses incurred by them in order to appear, and to compensation for their absence from their regular occupations; expert witnesses shall have the right to receive compensation for the duties they perform. The amounts to be paid to witnesses and expert witnesses shall be determined by special instructions of the People's Commissariat of Justice.

*66. Physical evidence shall comprise objects which serve as instruments for the commission of a crime, which retain on them traces of the crime, or which were objects of the criminal acts of the accused, and all other articles and documents which may facilitate the detection of a crime and the discovery of the persons guilty of it.

67. Physical evidence shall be described in detail, shall be incorporated into a case by special resolution of the pretrial investigator or by court ruling, and shall be preserved by the court or by the pretrial investigator in charge of the case. Physical evidence may sometimes be returned to the owner before the end of a case if the owner so requests and if the request can be granted without impairing the conduct of the case.

Physical evidence which cannot be preserved in the court or investigation chamber shall, when possible, be placed under seal, photographed, and kept until the court or pretrial investigator issues instructions concerning it.

68. When a case is transferred from one court to another, or from one pretrial investigator to another, all physical evidence shall be transferred with the case.

Note. Physical evidence which may change in composition or external appearance by reason of placement or mode of shipment, especially when shipped for study, shall be packed with especial care, if possible by persons experienced in packing for shipment.

*69. Sentences or rulings that cases be dismissed shall contain directions for the disposal of physical evidence, with the following stipulations:

(1) Instruments of the crime shall be subject to confiscation;

(2) Articles, the circulation of which is prohibited, shall not be issued, but shall be turned over to the appropriate institutions or destroyed;

(3) Articles of no value which cannot be used shall be destroyed; if interested persons or institutions request such articles, the request may be granted if the court deems that no obstacle to doing so exists;

(4) Other articles shall be returned to their owners; in the event of disputed ownership of these articles, the dispute shall be settled under civil procedure.

70. Physical evidence shall be retained until the sentence becomes final and executive or until the court has ordered a dismissal of the case. In cases where rights to objects are subject to determination by civil suit, physical evidence shall be retained until the adjudication of the case becomes final and executive under civil procedure.

71. If physical evidence subject to spoilage cannot be returned to the owner, it shall be promptly turned over to the appropriate state institutions to be put to use. If it should subsequently become necessary to return such physical evidence, the institutions which received it must return the same objects or their monetary equivalent.

*72. When necessary, interpreters may be called in by courts or pretrial investigators. Interpreters shall have the right to be reimbursed for the expenses incurred in appearing and to be compensated for their services. The remuneration of interpreters shall be determined by special instructions issued by the People's Commissariat of Justice.

73. If an interpreter refuses to appear or to fulfill his duties in court or in an investigation, the measures prescribed in Sections 60 and 62 of this code shall be taken against him.

74. In conducting searches and seizures, pretrial investigators shall call witnesses to their acts. Persons participating as parties in the case and relatives of the parties shall not serve as witnesses to official acts. (ponyatyye).

75. Witnesses to official acts shall have the right to be reimbursed for expenses incurred in appearing and to be compensated for time away from their usual work. The amount of compensation that may be paid to witnesses shall be determined by special instructions of the People's Commissariat of Justice.

76. If a witness refuses to appear or to fulfill his duties, the pretrial investigator may impose on him the same measures that are applicable to trial witnesses, expert witnesses, and interpreters (Sections 60 and 62 of the Criminal Procedural Code).

V. RECORDS

77. Records (protokoly) shall be kept of investigative actions and of courts executive** and judicial sessions.

**See note to Section 332.

78. A record of investigative actions -- interrogations, searches, seizures, inspections, and examinations of persons -- shall be drawn up by the pretrial investigator and shall contain the following: indication of the place and time of the investigative actions, the names of the pretrial investigator, the parties, and the witnesses to such actions, the testimony of the persons interrogated, the results of inspections and examinations of persons, the results of searches and seizures, statements and requests of the parties, of witnesses, of expert witnesses, and of other persons, and the pretrial investigator's decisions. The record shall be signed by the pretrial investigator and the witnesses, if any, to the investigative actions taken, and likewise by the persons interrogated. Reservations, corrections, and emendations shall be entered in the record above the signatures.

79. Records of executive sessions** [of courts] shall contain the following: indication of the time and place of the session, the composition of the court, the parties, if present, the case under consideration, motions received, and court rulings. The record shall be signed by the chairman and secretary of the court.

**See note to Section 332.

80. Records of judicial sessions [of courts] shall contain the following: indication of the time and place of the session and of the time it opened and closed, the composition of the court, the parties, if present, the case being heard, all actions of the court in the same order in which they took place, statements and motions of the parties, of witnesses, of expert witnesses, and of other persons, explanations given to persons committed for trial of their right to make explanations after each court action, rulings of the court, the testimony of witnesses and expert witnesses, a brief summary of the final statement of each person committed for trial, an explanation of the procedure and time limits for appealing the sentence, and everything that the parties have requested be entered in the record. The content of the arguments of the parties shall not be entered in the record; only the order in which they occurred in court shall be indicated. The record shall be signed by the chairman and secretary.

81. Within 3 days after the record has been drawn up and signed, the parties who are taking part in a judicial session may enter their remarks in the record, indicating if it is incorrect or incomplete. The court must consider the remarks and rule upon them.

VI. TIME LIMITS AND COURT COSTS

82. Time limits shall be calculated in hours, days [24-hour periods], and months. In calculating time limits, the hour and the day on which the period begins shall not be counted.

83. In calculating time limits in days, the period shall end at 2400 hours on the last day; if a given action must be taken in court or before a pretrial investigator, the period shall end at the conclusion of business hours in the courtroom or investigation chamber, but not earlier than 1600 hours on the last day.

84. In calculating time limits in months, the period shall end on the corresponding day of the last month, provided, however, that if a time limit calculated in months falls in a month without such a corresponding day, the period shall end on the last day of the month.

85. If the end of a period falls on 7 or 8 November, 22 January**, or 1 or 2 May***, the next following working day shall be considered the last day of the period.

**22 January is [now] a working day. (Vedomosti Verkhovogo Soveta SSSR 1951, No 31)

***And also 5 December (Decree of the Extraordinary Eighth Congress of Soviets of the USSR) and 1 January (Vedomosti Verkhovnogo Soveta SSSR 1947, No 45).

For institutions, enterprises, and organizations which have not adopted the continuous work week, and for individual citizens when the time limit would end on a revolutionary day, special rest day** (Sections 111 and 112 of the Code of Labor Laws), or weekly rest day, the last day of the time limit shall be the next following working day. (RSFSR Laws 1930, Law No 670, dated 30 October 1930)

**Special rest days have been abolished (USSR Laws 1940, Law No 385).

Note. The provisions of Paragraph 2 of this section in regard institutions, enterprises, and organizations shall be applied upon receipt of a statement, signed by the responsible director, certifying that the given institution, enterprise, or organization has not adopted the continuous work week. (RSFSR Laws 1930, Law No 670, dated 30 October 1930)**

**This Note is no longer in force.

86. A time limit shall not be considered to have been exceeded if an appeal or a required document is mailed prior to the expiration of the given period.

87. Time limits shall be extended for parties who show sufficient cause by decision of the pretrial investigator or by ruling of the court which is dealing with a given case.

88. Court costs shall comprise:

(1) Sums paid to witnesses, expert witnesses, and interpreters;

(2) Sums expended for the storage, shipment, and analysis of physical evidence;

(3) Other amounts expended by the court in conducting the case in question, and extraordinary expenditures.

89. If a defendant is found guilty, the court which pronounces the sentence shall at the same time rule on the recovery of costs from him. If several defendants are found guilty in the same case, the court shall rule on the amount to be paid by each of them, giving due consideration to the financial condition of the convicted persons.

90. If a case is dismissed, if a defendant is found not guilty, or if the person who must pay court costs is indigent, the costs shall be borne by the state.

If a case is dismissed by reason of reconciliation of the parties, the court may require the payment of costs by one or both of the parties.

If a defendant who has been found guilty is relieved of punishment, the court may require him to pay court costs.

90-a. In apportioning the payment of court costs among several persons, courts shall not require payment by an individual of a sum less than one ruble. If court costs in a given case total less than one ruble, such costs shall be borne by the state. (RSFSR Laws 1926, Law No 666, dated 18 November 1926)

Part 2

VII. INITIATION OF CRIMINAL PROCEEDINGS

91. The following shall be the grounds for initiating criminal proceedings:

(1) Statements of citizens and of various associations and organizations;

(2) Reports from governmental institutions and officials;

(3) Confessions of guilt;

(4) Motions by prosecutors;

(5) The immediate discretion of police inquiry agencies, pretrial investigators, or courts.

92. Statements by citizens may be either written or oral. Oral statements shall be recorded by judges, pretrial investigators, police inquiry agencies, and prosecutors, and the record must be signed by the person making the statement. When a statement is taken an explanation shall be given to the person making the statement of his liability to punishment for false denunciation.

93. Written statements must be signed by the person making the statement. Anonymous statements shall serve as grounds for initiating criminal proceedings only after secret preliminary confirmation by police inquiry agencies.

94. Judges, pretrial investigators, prosecutors, and police inquiry agencies shall accept all statements concerning crimes committed or in preparation by anyone. Judges and pretrial investigators shall accept such statements even though they relate to cases not under their jurisdiction, in which event the case shall be transferred by them to the proper jurisdiction.

95. If police inquiry agencies, prosecutors, or pretrial investigators ascertain from a statement or report that the criteria of a crime are not present, they shall decline to initiate a police inquiry or pretrial investigation and shall notify the interested persons or institutions. Such refusals may be appealed to the proper court by the person making the statement within a period of 7 days.

If any court ascertains from the contents of a statement or report received by it that the elements of a crime are not present, it shall take no further action in the matter and shall notify the interested persons or institutions to that effect.

*96. When the grounds specified in Section 91 of the Criminal Procedural Code are present and when the criteria of a crime are present in a statement:

(1) Police inquiry agencies shall initiate a police inquiry; if pretrial investigation of the case is required, police inquiry agencies shall notify [the appropriate] pretrial investigator and prosecutor within 24 hours;

(2) The prosecutor shall submit the case for pretrial investigation or police inquiry or send it directly to a court;

(3) The pretrial investigator shall begin the pretrial investigation and shall notify the prosecutor to that effect within 24 hours;

(4) The court shall submit the case for police inquiry or pretrial investigation, or shall accept the case directly for trial on its merits. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

VIII. POLICE INQUIRY

97. The following organizations shall be deemed to be police inquiry agencies (organy doznaniya):

(1) Agencies of the Workers' and Peasants' Militia;

(2) Agencies of the Main Administration of State Security and of the Main Administration of Fire Defense of the People' Commissariat of Internal Affairs USSR, and agencies of the financial, sanitary, technical, trade, and labor inspectorates in matters relating to their jurisdiction;

(3) Governmental institutions and officials may conduct police inquiries with regard to irregular acts committed by subordinates, provided that such cases shall be transferred to the proper jurisdiction within 3 days unless dealt with by administrative action. (RSFSR Laws 1923, Law No 480, dated 10 July 1923; 1932, Law No 21, dated 1 January 1932; 1935, Law No 190, dated 20 July 1935)

Note. Commanders (or heads) and commissars of separate military units, establishments, or institutions, and commanders and commissars** of large military units shall act as police inquiry agencies in cases subject to the jurisdiction of general judicial institutions involving crimes committed within the territorial jurisdiction of (v raspolozhenii) such military units, institutions or establishments by persons on active duty in the Workers' and Peasants' Red Army, and shall act in the same capacity in cases subject to the jurisdiction of military tribunals involving crimes committed by the same category of persons, irrespective of the place at which the crime was committed.

**The system of military commissars was abolished by an ukase of the Supreme Soviet USSR dated 9 October 1942. (Vedomosti Verkhovnogo Soveta SSSR 1942, No 38)

In cases involving the same crimes committed by militarized personnel of the railway guard of the People's Commissariat of Railways or by the militarized guard of enterprises and installations of special state importance, the commanders (or heads) of separate units or institution of such guards shall act as police inquiry agencies.

In these cases the police inquiry shall last not longer than 2 weeks, or, in exceptional circumstances, by authorization of a military prosecutor, not longer than one month. If the police inquiry does not establish the existence of the criteria of a crime, it shall be terminated by the police inquiry agency itself. (RSFSR Laws 1929, Law No 484, dated 17 June 1929)

98. The activities of police inquiry agencies shall be distinguished according to whether they are acting in a case for which a pretrial investigation is obligatory or in a case wherein the records of the police inquiry can serve as grounds for arraigning the accused without conducting a pretrial investigation.

99. A pretrial investigation of any case may be initiated by any investigative agency, except for special inspectorates which conduct investigations solely of cases within their respective jurisdictions. But if a case is initiated other than by a pretrial investigator, and if the criteria of one of the crimes specified in Section 108 are found in it, the agency which initiated the investigation shall immediately inform the pretrial investigator of that fact. The former shall not, thereupon, terminate proceedings necessary to ensure further investigation. When the necessary actions have been completed, the initiating agency shall transfer the case to the pretrial investigator without waiting for an order from the latter or for expiration of the one-month time limit (Section 105). After a case has been transferred to a pretrial investigator, other investigative agencies may conduct investigative proceedings [in that case] only upon special instructions from the pretrial investigator. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

Note 1. Seizure of postal or telegraphic correspondence shall be conducted in accordance with the provisions of Sections 186-188 of the Criminal Procedural Code. (RSFSR Laws 1924, Law No 756, dated 16 October 1924.)

Note 2. Searches and seizures may be conducted in localities where there is no militia by chairmen and members of village soviets, but only in cases when the person who has committed the crime is apprehended at the scene of the crime or immediately after committing one of the following crimes: larceny, looting, theft of livestock, murder, infliction of bodily injury, arson, or the manufacture, keeping, or sale of moonshine or special apparatus for its manufacture.

A report of any such search and seizure, together with the confiscated property and an inventory of it, shall be forwarded within 24 hours to the appropriate police inquiry agency, and the precinct people's investigator shall be notified of the search and seizure within the same period. (RSFSR Laws 1928, Law No 284, dated 29 March 1928)

Note 3. Cases under the jurisdiction of military tribunals involving crimes committed by persons specified in the note to Section 97 of this code and committed outside the territorial jurisdiction of a military unit, institution, or establishment, or outside that of a guard unit or institution, shall, when necessary, be preliminarily investigated by general police inquiry agencies until the proper police inquiry agency (Note to Section 97) enters the case. (RSFSR Laws 1929, Law No 484, dated 17 June 1929)

100. Police inquiry agencies shall be permitted to take into custody persons suspected of committing any crime which is subject to pretrial investigation only as a means of preventing the suspected person from evading investigation and trial and then only in the following cases:

(1) When the criminal is apprehended in the act of preparing to commit the crime, in the act of committing the crime, or immediately after having committed the crime;

(2) When the injured party or eyewitnesses identify a particular person as the one who committed the crime;

(3) When traces of the crime are found near or on the suspected person or in his residence;

(4) When the suspected person has attempted to escape or has been apprehended in the act of escaping;

(5) When the suspected person does not have a fixed place of residence or occupation;

(6) When the identity of the suspected person has not been established.

101. In conducting police inquiries with regard to cases for which pretrial investigation is not required, police inquiry agencies shall be guided by the provisions of Section 111--115, 117, 162--174, 175--188, and 189--195 of the Criminal Procedural Code. If actions other than those provided for by these sections are necessary, police inquiry agencies shall request the authorization of a pretrial investigator, or of a prosecutor if for any reason authorization cannot be given by the pretrial investigator. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)**

**At the present time prosecutors exercise supervision over the activities of police inquiry agencies. See the "Statute on Supervision by Prosecutors," confirmed by the ukase of the Presidium, Supreme Soviet USSR, of 24 May 1955 (pp 123-128).

102. After interrogating a person suspected of a crime which may be punished by a sentence to confinement for a period exceeding one year (Section 105, Subsection 3 of the Criminal Procedural Code)**, police inquiry agencies may elect to impose on him one of the measures to prevent evasion of justice specified in Section 144 of the Criminal Procedural Code, being guided therein by the provisions of Sections 146, 147, and 149--158 of the Criminal Procedural Code, and reporting each time on the measure taken to the pretrial investigator*** in whose precinct the police inquiry agency is located; the pretrial investigator*** shall have the right at any time to request the police inquiry agency to revoke or alter any such measure to prevent evasion of justice. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

**In connection with the version of Section 105 now in effect, this reference is no longer in force.

***At the present time prosecutors exercise supervision over the activities of police inquiry agencies. See the "Statute on Supervision by Prosecutors," confirmed by the ukase of the Presidium Supreme Soviet USSR of 24 May 1955 (pp 123-128).

103. In conducting a police inquiry with regard to any case involving a crime the punishment for which may not exceed one year (Section 105, Subsection 2 of the Criminal Procedural Code)**, the suspected person shall be taken into custody only in circumstances specified in Section 100 of the Criminal Procedural Code; in the absence of these circumstances, the suspected person shall sign an undertaking to appear in court.

**In connection with the version of Section 105 now in effect, this reference is no longer in force.

104. Whenever a suspected person has been taken into custody by it (Section 100 of the Criminal Procedural Code) a police inquiry agency shall, within 24 hours, notify the pretrial investigator in whose precinct that police inquiry agency is located, or the nearest people's judge, giving the grounds for the action.

Within 48 hours, calculated from the time notification is received from a police inquiry agency that a suspected person has been taken into custody by it, the pretrial investigator or people's judge shall either approve the arrest or void it. Police inquiry agencies shall alter any measures [taken by them] to prevent evasion of justice upon receiving instructions to that effect from the organs which have been notified of those measures. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)**

**In accordance with Section 131 of the RSFSR Constitution, arrests must be approved by a prosecutor.

Note. The procedure for approving arrests made by agencies of the State Political Administration shall be established by special rules drawn up for that purpose.

105. Police inquiries shall not last longer than one month, inclusive of committal for trial. This period may be extended by the procedure specified in Section 116. The procedure for dismissing and forwarding cases shall be governed by the provisions of Chapter XVII. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

106. If a police inquiry discloses information requiring pretrial investigation, the police inquiry agency shall forward all information produced by the inquiry to a pretrial investigator immediately upon concluding the actions specified in Section 99, without awaiting the expiration of the one-month time limit stipulated in Section 105 for the conduct of police inquiries. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

107. The pretrial investigator in whose precinct a given police inquiry agency is located shall supervise the conduct of police inquiries in each individual case. The pretrial investigator shall have access to all police inquiry materials at any time, and shall have the right to instruct the police inquiry agency, and to propose that it take one or another action, with regard to any case.**

**The functions specified in Section 107 shall be exercised by a prosecutor, rather than by a pretrial investigator. See footnote to Section 101.

Pretrial investigators shall receive and rule on complaints concerning the actions of police inquiry agencies**. Prosecutors shall exercise general supervision over the activities of police inquiry agencies. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

**The functions specified in Section 107 shall be exercised by a prosecutor, rather than by a pretrial investigator. See footnote to Section 101.

Note. The procedure and supervision of police inquiries conducted by agencies of the Unified State Political Administration shall be regulated by a special statute. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

IX. GENERAL SPECIFICATIONS FOR THE CONDUCT OF PRETRIAL INVESTIGATIONS

*108. Pretrial investigations shall be conducted by pretrial investigators in cases involving crimes covered by Sections 58-2--58-14; 58-2; 59-3; 59-3a**; 59-3b; 59-4, Paragraph 2; 59-5--59-13; 73, Paragraph 1; 95, Paragraph 2; 110, Paragraph 2; 112, Paragraph 1; 114; 115, Paragraph 2; 116, Paragraph 2**; 117, Paragraph 2; 118; 119; 128--132; 133--135; 136--142; 151--155; 162, Clause d**; 165, Paragraph 3**; 167**; 175, Paragraph 3; 193-12; 193-17; 193-18; 193-20; 193-21; and 193-23--193-26 of the Criminal Code. When so requested by a prosecutor, or on their own initiative, pretrial investigators may conduct investigations of cases involving other crimes when such cases are especially complex or are of especial public importance. By authorization of a prosecutor, pretrial investigators may also transfer the investigation of any case involving the crimes enumerated in this section to other investigative agencies. Prosecutors shall have the right themselves both to carry out individual investigative actions and to conduct the investigation of any case involving the crimes enumerated in this section.

**See the ukases of the Presidium, Supreme Soviet USSR, of 4 June 1947, "On More Effectively Safeguarding the Personal Property of Citizens" and "On Responsibility Under Criminal Law for Plundering State and Public Property" (Vedomosti Verkhovnogo Soveta SSSR 1947, No 19), and the decree of the Plenary Session, Supreme Soviet USSR of 22 August 1947, No 12/6/V.

The cases in which the investigation of crimes enumerated in this section shall be conducted by the Unified State Political Administration shall be defined by special provisions. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

109. If a pretrial investigator considers the police inquiry material received by him to be sufficiently complete and the case in question to have been sufficiently clarified, he may omit conducting a pretrial investigation or confine himself to carrying out individual investigative actions. In such a case, the pretrial investigator shall carry out the following investigative actions:

(1) Prefer charges against the accused;

(2) Interrogate the accused;

(3) Draw up a bill of charges.

110. When a pretrial investigator receives information or material concerning the commission in his precinct of a crime which requires a pretrial investigation, he shall immediately initiate such an investigation, draw up a resolution to that effect, and promptly send a copy of it to the prosecutor.

From the moment a pretrial investigation has been initiated, police inquiry agencies shall take action on the given case only upon instructions from the pretrial investigator.

111. In conducting a pretrial investigation it is the duty of the pretrial investigator to clarify and analyze [all] the circumstances involved, regardless of whether they incriminate or exculpate the accused, or whether they aggravate or mitigate the degree or nature of his liability to punishment.

112. Being guided by the circumstances of the case, the pretrial investigator shall so direct the pretrial investigation as to achieve the most complete and comprehensive consideration of the case. The pretrial investigator shall not refuse the requests of the accused or of the injured party that he [the investigator] interrogate witnesses and expert witnesses and assemble additional evidence, provided that the circumstances of which they request the establishment might be of importance to the case.

113. Deemed to constitute circumstances of importance to a case shall be those specified in Sections 45, 47, and 48 of the Criminal Code and all other circumstances, the clarification of which might aid in the investigation of the case. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

114. If a request of the accused or of the injured party that an investigative action be taken or that some circumstance be established is denied, the pretrial investigator shall draw up a resolution to that effect, explaining the grounds for the denial.

115. Facts ascertained by means of a pretrial investigation shall be subject to public disclosure only to the extent that the pretrial investigator deems this possible; the publication of information from any pretrial investigation without the authorization of the pretrial investigator shall be prosecuted according to law.

116. Pretrial investigations of cases involving the crimes enumerated in Section 108 shall terminate within 2 months from the beginning of the investigation, including arraignment [of the accused] or dismissal of criminal prosecution. This period, as well as the time limit for police inquiries (Section 105), may be extended in individual cases for a period not exceeding one month by authorization of the kray (oblast) prosecutor and pursuant to a resolution issued by him stating grounds for the action. The Prosecutor of the Republic shall have the right further to extend the time limit in individual cases and to establish a general extension of the time limit for particular areas of the republic when local conditions so require. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

117. There shall be combined into a single investigative action only cases involving an accusation against a number of persons of complicity in one or a number of crimes which are of the same kind or which proceeded from the same intent, or involving the commission by one and the same person of a number of such crimes.

118. Supervision over the conduct of pretrial investigations shall be exercised by prosecutors, who shall familiarize themselves with the actions taken in the course of pretrial investigations and shall have the right to issue instructions to pretrial investigators on conducting and supplementing such investigations. The instructions of prosecutors shall be binding on pretrial investigators. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

119. If a pretrial investigator ascertains from his examination of a case that the crime in question has caused damage or loss to the injured party, he shall explain to the latter his right to file civil suit and shall enter that fact in the record.

120. If a civil suit is filed, the pretrial investigator shall examine the injured party's motion and shall issue a decision giving his reasons for either admitting the injured party to participation in the criminal proceedings in the capacity of a civil plaintiff or for denying such admittance.

*121. The pretrial investigator shall have the right to take, either on his own initiative or on the motion of the plaintiff, measures to secure execution of judgement on the civil complaint, if he considers that failure to take such measures may deprive the plaintiff of the possibility of receiving compensation for damage or loss sustained.

Whenever a pretrial investigator finds that the injured party has suffered damage or loss and that there is reason to expect that a civil suit will be filed, he may take steps to secure a civil judgment before the suit is filed.

*121-a To ensure execution of sentence in cases where the crime for which one or more persons are being prosecuted is subject to punishment under the Criminal Code in the form of confiscation of property, a pretrial investigator shall have the right -- acting either on his own initiative or on the motion of a court or prosecutor -- to take measures to prevent the concealment of property by such persons. The procedure for taking, and the nature of, such measures shall be specified in a special instruction issued by the People's Commissariat of Justice.** (RSFSR Laws 1923, Law No 480, dated 10 July 1923)

**This instruction has not been issued.

122. Pretrial investigators shall be subject to challenge in the cases specified in Sections 43 and 45. Challenges must be filed immediately after the grounds therefor become known. Challenges filed against any pretrial investigator shall be referred by the latter to a prosecutor within 24 hours, during which time investigative actions shall not be suspended. Prosecutors shall rule within 3 days on challenges filed against pretrial investigators. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

X. INVESTIGATION PRECINCTS

123. Investigations shall be conducted in the same rayon in which the crime was committed. For the purpose of maximum speed, completeness, or convenience of investigation, by authorization of the supervisory agency concerned an investigation may be conducted at the place where the crime was discovered or at the place of residence of the person who committed the crime or of the injured party. The question of jurisdiction for investigation over any case shall be decided by the supervisory agency in whose rayon the investigation is initiated. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

124. Rescinded. (RSFSR Laws 1929, Law No 756, dated October 1929)

125. Any pretrial investigator who receives information concerning a crime which is subject to investigation in another investigation precinct shall confine himself to conducting only those investigative actions which cannot be postponed and shall then transfer the case to the proper pretrial investigator.

126. If an agency which is conducting an investigation needs to have individual investigative actions conducted in another rayon, it may either entrust the taking of such actions to the appropriate investigative agency in that rayon or else conduct them independently. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

127. Rescinded. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

XI. PREFERMENT OF CHARGES AND INTERROGATION

128. When sufficient information is known to provide grounds for preferring a charge of commission of crime, the pretrial investigator shall draw up a resolution setting out his reasons for instituting proceedings against the given accused person.

Charges shall be preferred against the accused no later than 48 hours from the day on which the pretrial investigator draws up the resolution to institute proceedings against the given accused person.

129. A resolution to institute proceedings against an accused person shall include the name of the person who drew up the resolution, the time and place it was drawn up, the given name, patronymic, and family name of the accused, the time, place, and other circumstances of the crime insofar as they are known to the pretrial investigator, and the grounds for instituting proceedings.

130. Accused persons who are at liberty shall be summoned by telephonogram or by post. Summonses to accused persons living in rural localities without postal or other means of communication shall be served via village soviets. Summonses shall be sent in two copies, the first to be retained by the accused and the second to be returned with a receipt signed by him. If the person summoned is temporarily absent, the summons may be delivered to members of his household or to nearby neighbors under receipt for transmittal to him.

Accused persons who are in custody shall be summoned via the director of the place of confinement or shall be interrogated at the place of confinement. (RSFSR Laws 1932, Law No 21, dated 1 January 1932)

131. If any accused person fails to appear without sufficient cause, he shall be compelled to appear. The pretrial investigator may compel the accused to appear without preliminary summons if the latter conceals himself to avoid investigation or has no fixed place of residence or regular employment.

132. If an accused person is unable to appear before the pretrial investigator because of illness, the investigator may conduct the interrogation at the place where the accused is located.

133. Rescinded. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

134. A pretrial investigator shall interrogate the accused not later than 24 hours after he appears or is compelled to appear, or after the investigator is notified that the accused has been taken into custody. If the interrogation cannot be conducted within the specified period of time, a report on the reasons for postponement shall be made.

135. Before interrogating the accused, the pretrial investigator shall make sure of his identity and explain to him the essential points of the charges which have been preferred.

136. Investigators shall not have the right to use force, threats, or other such measures to obtain testimony or confessions.

137. Accused persons shall be interrogated separately, and investigators shall take steps to prevent accused persons involved in the same case from communicating with each other. When necessary, investigators shall arrange personal confrontations of accused persons, and also of accused persons and witnesses.

138. Interrogations of accused persons shall begin with the recommendation that the defendant tell everything he knows about the case; after the defendant has testified he shall be questioned. The testimony of the accused shall be entered in the record of the interrogation, and, insofar as is possible, the questions put to the accused and his answers to them shall be recorded. The testimony of the accused shall be entered in the record in the first person, and, insofar as is possible, verbatim.

139. Upon completion of an interrogation, the record shall be read to the accused, who shall have the right to demand that it be corrected or supplemented in accordance with the testimony given by him. If the accused so requests, he shall be permitted to write out his own testimony. The record shall be signed by the accused and by the pretrial investigator.

140. When mutes, deaf persons, or persons who speak a language not understood by the pretrial investigator are to be interrogated, an interpreter or a person who understands deaf or mute sign language shall be called in; the participation of these persons in the interrogation shall be noted in the record and they shall sign it.

141. When there is reason to believe that an accused person is a minor and the documents necessary to clarify this question are not available, his age shall be determined by means of medical examination.

142. When proceedings are instituted against an official, the pretrial investigator shall decide the question of whether or not the accused shall be removed from his post for the duration of the investigation, and he shall communicate his decision to the accused person's place of work.

XII. MEASURES TO PREVENT EVASION OF JUSTICE**

**In accordance with Section 19 of the "Statute on Supervision by Prosecutors in the USSR," prosecutors shall supervise the selection of measures to prevent evasion of justice.

143. Pretrial investigators shall require of each person against whom proceedings have been instituted a signed undertaking to appear for investigation and trial and to give notice of any change of residence. In addition, pretrial investigators may take measures to prevent accused persons from evading trial and investigation.

144. Measures to prevent evasion of justice shall consist of the following: (1) a signed undertaking not to leave; (2) personal and financial guaranty; (3) posting of bail; (4) house arrest; and (5) taking into custody. (RSFSR Laws 1923, Law No 480, dated 10 July 1923)

Note. A measure to prevent evasion of justice by Red Army men in troop units and by Navy personnel may consist of keeping them under close supervision in the units in which they serve.

145. Measures to prevent evasion of justice shall be taken only after proceedings have been instituted against a suspect as an accused person, and they may be altered or revoked after the first interrogation. In exceptional cases, measures to prevent evasion of justice may be taken against suspects even before charges have been preferred. In these cases charges shall be preferred no later than 14 days after such measures have been taken. If it is impossible to prefer charges within the stipulated period, the measures to prevent evasion of justice shall be revoked.

146. Pretrial investigators shall draw up a resolution concerning the taking of a measure to prevent evasion of justice, which resolution shall specify the crime of which the given person is accused and the grounds for taking the given measure to prevent evasion of justice. The accused and the prosecutor shall be notified immediately of the measure taken**.

**Taking into custody requires the approval of a prosecutor (see Section 131 of the RSFSR Constitution).

147. In deciding whether or not it is necessary to take a measure to prevent evasion of justice, or in choosing the measure to be taken, the pretrial investigator shall take the following into consideration: the gravity of the crime attributed to the accused, the strength of the evidence against him, the probability that the accused will attempt to evade investigation or trial or hamper discovery of the truth, the state of health of the accused, his occupation, and other circumstances.

148. A prosecutor may propose that a pretrial investigator revoke a measure to prevent evasion of justice which has been taken, or replace it with another, or choose a measure to prevent evasion of justice if one has not been chosen by the pretrial investigator. If the pretrial investigator does not agree with the prosecutor's proposal, the question shall be decided by the court which has jurisdiction over the given case**.

**See Section 19 of the "Statute on Supervision by Prosecutors in the USSR," p 124.

Note. The proposal of a prosecutor that a measure to prevent evasion of justice be ameliorated shall be binding on a pretrial investigator, but after implementing the proposal the pretrial investigator may protest to the court.**

**See Section 19 of the "Statute on Supervision by Prosecutors in the USSR," p 124.

149. A signed undertaking not to leave shall consist of a promise by the accused not to remove himself from the place of residence selected by him or by the pretrial investigator without the permission of the latter or of the court. If the accused violates this promise a more severe measure to prevent evasion of justice may be substituted, and the accused shall be informed of this fact when he signs the undertaking not to leave.

150. A personal guaranty shall consist of a signed undertaking obtained from trustworthy persons that they guarantee the appearance of the accused and obligate themselves to produce him for the pretrial investigator or in court upon the first demand. The number of guarantors shall be determined by the pretrial investigator and shall not be less than two.

In obtaining a signed undertaking from guarantors, they should be informed of their responsibility if the accused should evade investigation or trial.

151. If the personal guaranty is selected as the measure to prevent evasion of justice and the accused evades investigation or trial, the measures provided for in Sections 60 and 62 of this code shall be taken against the guarantors.

152. A financial guaranty shall consist of a signed undertaking obtained from a sufficiently well-to-do person or organization to pay a stipulated sum if the accused should not appear for investigation or trial.

153. Bail shall consist of money or other property deposited with the court by the accused himself or by another person or organization as a guarantee that the accused will appear for investigation and trial.

154. The amount of financial guaranty or of bail shall be fixed by the pretrial investigator in accordance with the gravity of the charge, the strength of the evidence against the accused, the financial position of the guarantor or bailor, and other circumstances of the case.

155. In accepting a guaranty or bail the pretrial investigator shall draw up a record which shall be signed by the guarantor or bailor, a copy of which shall be given to the latter.

156. If the accused escapes or evades investigation or trial, any bail posted shall revert to the Republic, and if there is a financial guaranty the amount set in the guaranty shall be exacted from the guarantor in favor of the republic.

157. House arrest shall consist in depriving the accused of freedom by confining him to his home, either with or without posting a guard.

158. Taking into custody as a measure to prevent evasion of justice shall be permitted only in cases involving crimes for which a sentence to confinement for a period exceeding one year may be imposed and when there are specific grounds to fear that the accused, if left at liberty, would obstruct the discovery of the truth or conceal himself in order to avoid investigation or trial, in which case the agency which selects

the measure to prevent evasion of justice shall take into consideration the strength of the evidence against the accused, his occupation, age, state of health, and family situation.

In cases involving crimes covered by Section 59-13; Section 78, Paragraph 1; Section 82, Paragraph 1; Section 104, Paragraph 1; Section 107, Paragraph 1; Section 162, Clauses b and c**; Section 165, Paragraph 1**; and Sections 170 and 171 of the Criminal Code, defendants may be taken into custody as a measure to prevent evasion or justice when it is established that the accused has connections with criminal elements, or does not have a permanent place of residence and occupation, or is evading appearance for investigation or trial.

**See the ukases of the Presidium, Supreme Soviet USSR, of 4 June 1947 "On More Effectively Safeguarding the Personal Property of Citizens," and "On Responsibility Under Criminal Law for Plundering State and Public Property" (Vedomosti Verkhovnogo Soveta SSR 1947, No 19), and the decree of the Plenary Session of the Supreme Court USSR of 22 August 1947, No 12/6/V.

In cases involving crimes covered by Sections 58-2 -- 58-11; Section 58-13; Section 58-14; Section 59-2, Paragraph 1 (in regard to those persons mentioned in Clause a); Section 59-3; Section 59-7, Paragraph 2; Section 59-8; Section 59-9; Section 110, Paragraph 2; Section 112, Paragraph 1; Section 116, Paragraph 2**; Section 117, Paragraph 2; Section 132; Section 136***; Section 153, Paragraph 2 (in cases of group rape)****; Sections 166** and 167**; Section 175, Paragraphs 2 and 3; and Sections 193-16 -- 193-18***** of the Criminal Code, taking into custody as a measure to prevent evasion of justice may be applied solely by reason of the social danger constituted by the given crime.

**See the ukases of the Presidium, Supreme Soviet USSR, of 4 June 1947 "On More Effectively Safeguarding the Personal Property of Citizens" and "On Responsibility Under Criminal Law for Plundering State and Public Property" (Vedomosti Verkhovnogo Soveta SSSR 1947, No 19), and the decree of the Plenary Session of the Supreme Court USSR of 22 August 1947, No 12/6/V.

***See the ukase of the Presidium, Supreme Soviet USSR, of 30 April 1954, "On Increasing the Criminal Penalty for Murder" (Vedomosti Verkhovnogo Soveta SSSR 1954, No 11).

****See the ukase of the Presidium, Supreme Soviet USSR, of 4 January 1949, "On Increasing the Criminal Penalty for Rape" (Moskovskiy Bol'shevik, 6 January 1949).

*****Sections 193-24, 193-27, and 193-28 of the edition of the RSFSR Criminal Code currently in force.

The agency which applies the measure to prevent evasion of justice shall state precisely in its resolution to take an accused person into custody the concrete grounds for applying this measure. (RSFSR Laws 1927, Law No 332, dated 6 June 1927)

159. When an accused person is taken into custody as a measure to prevent evasion of justice solely as a result of the danger that, if left at liberty, he would obstruct discovery of the truth, he may be held in custody no longer than 2 months.

In especially complex cases this period may be extended for one month with the approval of the prosecutor who is supervising the investigation.

160. When it is decided to take an accused person into custody as a measure to prevent evasion of justice, the pretrial investigator shall notify the prosecutor and shall send copies of the resolution to the place of confinement and to the place of work of the accused. If the accused is a subject of a foreign state, a copy of the resolution shall also be sent to the People's Commissariat of Foreign Affairs.**

**See note to Section 146.

161. Measures to prevent evasion of justice which have been adopted shall be revoked or altered if there is no longer a need for such measures in general or for the particular measure which has been chosen.

Measures to prevent evasion of justice taken by pretrial investigators shall be revoked or altered by a resolution of the latter giving the reasons therefor. Measures to prevent evasion of justice adopted upon the proposal of a prosecutor may be altered by a pretrial investigator only with the approval of the prosecutor. If a measure to prevent evasion of justice has been ordered by a prosecutor's office, it shall be rescinded or altered only by order of the prosecutor.

XII. INTERROGATION OF WITNESSES AND EXPERT WITNESSES

162. Witnesses and expert witnesses shall be interrogated at the place where the investigation is being conducted, for which purpose they shall be summoned before the pretrial investigator. They shall be summoned by the procedure provided for in Section 130 of the Criminal Procedural Code.

Pretrial investigators may, if they deem it more convenient, conduct interrogations at the place where witnesses and expert witnesses are located.

163. Witnesses shall be interrogated separately and not in the presence of other witnesses; during the proceedings the pretrial investigator shall take steps to prevent witnesses in the same case from communicating with one another until the interrogation is terminated. If necessary, pretrial investigators shall arrange personal confrontations of witnesses.

164. Before beginning an interrogation, pretrial investigators shall make sure of the identity of the witness, establish his relationship with the parties, caution him as to his liability to punishment for refusing to give testimony or for giving false testimony, and obtain a signed certification of the above from the witness.

165. The interrogation of a witness shall begin with the recommendation that he tell all he knows about the case, and after his narration questions shall be put to him. His testimony shall be recorded inthe first person, and, when possible, verbatim. Questions asked by the pretrial investigator and the answers to them shall be entered in the record, verbatim if necessary.

166. Witnesses may be interrogated only about those facts which must be established in the given case and about the personal characteristics of the accused.

167. When a mute or deaf person, or a person who speaks a language not understood by the pretrial investigator, is interrogated, an interpreter or a person who understands deaf and mute sign language shall be called in; the participation of these persons in the interrogation shall be noted in the record, and they shall sign the record.

168. When the interrogation is finished, the record shall be read to the witness, who shall have the right to demand that the record be corrected or supplemented in accordance with the testimony given by him. If the witness so requests, he shall be permitted to write out his own testimony.

The record shall be signed by the witness and by the pretrial investigator.

169. If expert witnesses are to be called in, the number to be called shall be determined by the pretrial investigator. If the accused so demands, the pretrial investigator may call in, in addition to the expert witnesses selected by him, an expert witness chosen by the accused; this may be refused if the investigator deems it impossible to call in the expert witness chosen by the accused, or if he considers that doing so may delay the pretrial investigation.

170. Before interrogating expert witnesses, pretrial investigators shall make sure of their identity and caution them that they must render opinions strictly in accordance with the circumstances of the case and with facts in the special fields of knowledge for which they were called in as expert witnesses; pretrial investigators shall also caution expert witnesses as to their liability to punishment for refusing to testify or for giving false testimony.

171. Pretrial investigators shall explain to expert witnesses those points on which opinions are required. Accused persons shall have the right to submit in writing questions on which expert witnesses should render opinions.

Expert witnesses shall have the right, with the permission of the pretrial investigator, to familiarize themselves with those circumstances of a case of which they must have knowledge in order to draw conclusions.

Note. If an expert witness finds that the data furnished him by the pretrial investigator is not sufficient to permit him to render an opinion, he shall draw up a statement declaring his inability to do so. In these cases, the extent to which preliminary investigation data may be made available to the expert witness shall be determined by the prosecutor or by the court which has jurisdiction over the case in question.

172. If there are several expert witnesses, and if they so request, they shall be permitted to confer with each other before stating their conclusions.

173. If the expert witnesses arrive at a unanimous conclusion, their expert opinion may be announced by one of their number selected by the others; if, however, there is a divergence of opinion among the expert witnesses, each expert witness must state his own conclusions. After the expert opinion has been given, each of the expert witnesses may be questioned. When the testimony of the expert witnesses is complete, a record thereof shall be drawn up in accord with the provisions of Section 168 of the Criminal Procedural Code.

174. If the pretrial investigator considers the expert opinion rendered to be insufficiently clear or incomplete, he may, either on his own initiative or upon the request of the accused, issue a resolution calling for the rendering of another expert opinion and giving the reasons for doing so. If expert medical opinion is involved, the request for other expert witnesses shall be submitted to the appropriate guberniya or uyezd agency of the People's Commissariat of Health.

XIV. SEARCH AND SEIZURE

175. Pretrial investigators who have sufficient cause to suppose that objects which might be significant in a case are located on certain premises or are in the possession of a certain person shall demand that such objects be delivered up and shall seize them; if the objects are not surrendered, the pretrial investigator shall remove them by compulsory means or shall conduct a search, after drawing up a resolution to that effect explaining the grounds for taking such action.

176. Governmental institutions, officials, private persons, and organizations and societies of any sort shall not have the right to refuse demands of pretrial investigators to surrender documents and other objects or copies of them.

Note. The surrender or inspection of any document which contains any state, diplomatic, or military secret may be conditioned by the interested institutions upon special guarantees established by them in agreement with a prosecutor.

177. Searches and seizures shall be conducted during the day, except in cases when they cannot be postponed. Searches and seizures shall be conducted in the presence of witnesses to official acts and of the person who occupies the given premises, or his family, or his neighbors.

Searches and seizures on premises occupied by any institution shall be conducted in the presence of representatives of the institution.

178. Searches and seizures on premises occupied by diplomatic missions, or on premises where diplomatic representatives and members of diplomatic missions and their families live, shall be conducted only upon the request or with the consent of the diplomatic representative, and representatives of the Office of the Prosecutor and of the People's Commissariat of Foreign Affairs, if the latter are situated in the given locality, must be present when such acts of search and seizure are conducted. (RSFSR Laws 1927, Law No 331, dated 23 May 1927)

179. Upon commencing a search or seizure, a pretrial investigator shall read the resolution issued by him or by a court. When necessary the place being searched may be surrounded by guards or by persons specially assigned for the purpose.

180. In conducting a search, pretrial investigators shall have the right to open locked premises and depositories if the owner refuses to open them voluntarily; in so doing, pretrial investigators should avoid excessive damage to locks, doors, and other objects.

181. In conducting a search, a pretrial investigator shall take steps to prevent the public disclosure of circumstances discovered during the search relating to the personal life of the person under search and not having a bearing on the case.

182. In carrying out searches and seizures, pretrial investigators shall confine themselves strictly to the confiscation of documents and other objects which have a direct bearing on the case. If objects are found during a search which have been removed by law from circulation, they shall be subject to confiscation regardless of their bearing on the case.

183. Pretrial investigators shall record the confiscation of documents or other objects. All documents and other objects confiscated during a search or seizure shall be shown to the witnesses to official acts and other persons present and described in a special inventory compiled at the place of the search or seizure and attached to the record.

184. Documents and other objects confiscated during a search or seizure shall be immediately placed under seal at the place of search or seizure.

185. Statements and protests of any sort with regard to the search or seizure shall be entered in the record.

A copy of the record and of the inventory shall be given to the person who is searched or to his family.

186. If it is necessary to seize postal or telegraphic correspondence, the pretrial investigator shall notify the appropriate postal and telegraphic institution to take the correspondence into custody and shall request authorization from the prosecutor to seize it.

187. Upon receipt of authorization from the prosecutor, the pretrial investigator shall notify the appropriate postal and telegraphic institution to deliver the required correspondence to him or shall notify that institution of the time at which he will arrive to effect the seizure.

188. Upon arriving to effect the seizure, the pretrial investigator shall show the authorization of the prosecutor to the head of the postal and telegraphic institution. The seizure shall be conducted in the presence of representatives of the postal and telegraphic institution.

XV. INSPECTIONS [OF PHYSICAL OBJECTS] AND THE EXAMINATIONS OF PERSONS

189. Pretrial investigators shall conduct an inspection of documents and other objects taken during searches and seizures at the place of search, or, if a long period of time is required for the inspection, or if there are other reasons, in the investigator's chamber, after all objects taken during the search have been delivered to him under seal.

190. Inspections and examinations of persons shall be conducted during the day, except for cases which cannot be postponed.

Inspections of postal and telegraphic correspondence shall be conducted in accordance with the provisions of Sections 186--188 of the Criminal Procedural Code.

191. Pretrial investigators shall not be present during the personal examination of any person of the opposite sex if the personal examination involves the nude exposure of the person being examined, except in cases when that person does not object to the investigator's presence.

192. Pretrial investigators shall maintain a record of the results of inspections and examinations of persons, describing everything in the order in which it is observed and discovered, and in exactly the form in which it exists at the time of the inspection.

When necessary, experts shall be called in to participate in an inspection or examination of persons, in which case the provisions of Sections 169--174 of the Criminal Procedural Code shall be observed.

193. Investigators shall call in forensic-medical experts via guberniya health departments for the examination of bodies and autopsies, for personal examination of the injured party and the accused, and in other cases when expert medical opinion is required.

If it is difficult to call in such an expert witness, the nearest physician shall be called in.

194. The pretrial investigator, the witnesses to official acts, and any other person present at an inspection, shall have a right to express his opinion concerning any actions of the physician which seem to him questionable, and these opinions shall be entered in the record.

195. Records of autopsies and medical examinations of persons shall be drawn up by the physician and signed by the pretrial investigator.

XVI. DETERMINATION OF PSYCHOLOGICAL CONDITION OF ACCUSED PERSONS

196--201. Rescinded. (RSFSR Laws 1929, Law No 756, dated 20 October 1929)

XVII. SUSPENDING AND TERMINATING PRETRIAL INVESTIGATIONS**

**According to the text of the decree of the VTsIK and Sovnarkom RSFSR of 20 October 1929 (RSFSR Laws 1929, Law No 756).

202. Pretrial investigations shall be suspended: (a) when the whereabouts of the person under investigation is unknown, or (b) when he is psychologically deranged or is suffering from any other serious illness certified by a physician in the service of the state.

Investigations shall be suspended only when information has been obtained upon which charges can be preferred. If such information has not been obtained, the case shall not be suspended, but dismissed.

The person who is conducting an investigation shall draw up an order describing the essential features of the case and the circumstances requiring a suspension of the investigation.

*203. Investigations shall be suspended in accordance with Section 202, Clause a , when the time limit for the investigation (Sections 105 and 116) has expired. During this period the person conducting the investigation must take steps to find the person under investigation.

Investigations shall be suspended according to Section 202, Clause b, until the person under investigation recovers. If it is found that the person under investigation is mentally ill or incurably ill, the case shall be submitted to court for the application of measures social defense of a medical nature, or shall be dismissed. When a case is suspended under Section 202, Clause b, the person conducting the investigation shall have the right to enter a resolution that the person under investigation be placed in an appropriate curative institution in order to establish the fact of his illness.

204. Investigative agencies shall dismiss cases:

a. When the grounds specified in Section 4 are present;

b. When there is insufficient evidence to arraign the accused.

The investigative organ shall draw up a resolution to dismiss the case stating the grounds for the action, and shall send the resolution to the accused and to the person or institution upon whose statement the case was initiated.

Resolutions to dismiss cases may be appealed within 5 days to the agency which is supervising the pretrial investigation. (RSFSR Laws 1933, Law No 135, dated 10 June 1933)

205. Proceedings on a case which has been dismissed because the accused has not been found or which has been suspended shall be reopened by means of a resolution stating the grounds for the action issued by the agency which dismissed or suspended the proceedings.

206. If the person conducting a pretrial investigation is of the opinion that the investigation is completed and that the facts obtained are sufficient for an arraignment, he must notify the person under investigation of this, explain to him his right to inspect the record of all proceedings in the case, make such an inspection possible, and inquire whether the person under investigation desires to supplement the investigation, and if so in precisely what way. If the person under investigation points out circumstances having a bearing on the case and previously not investigated, the person conducting the investigation must supplement it.

207. Upon the completion of an investigation a bill of charges including the following items shall be drawn up: a summary of the essential elements of the case adducing the circumstances thereof, whether favorable or unfavorable to the person under prosecution, and the evidence which is confirmed by the circumstances cited; detailed information on the personal characteristics of the individual who committed the crime and on the place, time, instruments, and motives of the crime; information about the injured party; and a citation of the section of the Criminal Code covering the given crime, or, when more than one crime is involved, the sections covering each of them.

To the bill of charges shall be appended a list of persons subject to summons to the judicial session and information on the following: on how long the person under investigation has been held in custody, on the physical evidence, and on measures taken to ensure execution of the sentence and of the civil suit, if such has been filed. The person who draws up the bill of charges shall confine the list of persons subject to summons to those who are actually essential, and shall not list witnesses whose testimony adds nothing to that of other witnesses already on the list or to other undisputed facts of the case. The list of persons subject to summons shall indicate their home addresses and the pages of the case record which contain their testimony. The text of the bill of charges shall also contain references to the pages of the case record on which confirmation of the facts set forth in the bill of charges can be found.

208. The pretrial investigator shall submit the bill of charges and the case record to the prosecutor. All other investigative agencies shall submit bills of charges involving crimes for which the Criminal Code provides confinement for a period exceeding one year to a pretrial investigator**, and those for all other cases directly to a people's court.

**At the present time, to a prosecutor, not to a pretrial investigator (see footnote to Section 101)..

Agencies of the Unified State Political Administration shall submit cases involving the crimes specified in Section 108 to a prosecutor. They shall submit all other cases directly to a court.

209--211. Rescinded.

XVIII. APPEALING ACTIONS OF PRETRIAL INVESTIGATORS

212. Parties, witnesses to a crime, expert witnesses, interpreters, witnesses to official acts, bailors and guarantors of the accused, and other persons may appeal acts of pretrial investigators which violate or infringe their rights. Appeals shall be filed with the prosecutor of the same rayon and court to which the pretrial investigator is attached.

213. Appeals shall be filed either directly or via the pretrial investigator whose action is being appealed. Upon receiving an appeal, the investigator shall issue a signed receipt.

214. Appeals may be written or oral, and in the latter case they shall be recorded by the pretrial investigator, prosecutor, or judge and the record shall be signed by the appellant.

215. Appeals shall be filed within 7 days of [and including] the day on which the act of the pretrial investigator which is appealed against became known to the appellant. There shall be no time limit for the filing of appeals relating to the choice of measures to prevent evasion of justice, to delays in proceedings, or to illegal acts of investigators.

216. The filing of an appeal shall not suspend implementation of the pretrial investigator's action under appeal pending decision of the appeal.

217. Pretrial investigators shall submit appeals filed with them to a prosecutor within 24 hours, together with their explanatory comments.

218. Prosecutors shall consider appeals within 3 days after their receipt.

219. In deciding appeals, prosecutors may require explanatory comments from the pretrial investigator if such have not been submitted previously. Prosecutors may require the investigator to submit the record of the case only when it seems impossible to rule on the appeal without it.

220. The person who has filed an appeal shall be notified of the prosecutor's ruling on the appeal and that ruling shall be put into effect immediately. If the pretrial investigator or the person who filed the appeal does not agree with the prosecutor's ruling, that ruling can be appealed to the guberniya court.

XIX. ACTIONS OF INVESTIGATORS AND PROSECUTORS RELATING TO THE DISMISSAL OF CASES AND TO COMMITTAL FOR TRIAL**

**According to the text of the decree of the VTsIK and Sovnarkom RSFSR of 20 October 1929 (RSFSR Laws 1929, Law No 756).

221. After receiving a case from the agency which has conducted the investigation, pretrial investigators and prosecutors shall: (a) suspend or dismiss the proceedings, if there are grounds for doing so; (b) return the case for further investigation, with their instructions; or (c) approve the bill of charges by means of a brief resolution, which shall constitute committal for trial.**

**See Section 27 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" (p 106).

222. If it is established that the acts of the person under investigation contain the criteria of a misdemeanor subject to punishment by disciplinary action by the person's superiors (Note 1 to Section 112 of the Criminal Code), the person who dismisses the criminal case shall note this fact in the resolution to dismiss the case and shall forward a copy of this resolution to the place of work of the person under investigation.

223. Resolutions on the dismissal of cases shall provide for the disposal of physical evidence. Instruments of crime shall be confiscated; articles the circulation of which is prohibited shall be transferred to the proper institutions or destroyed; articles of no value which cannot be used shall be destroyed; if interested persons or institutions request such articles, they may be given to them if no obstacle

to doing so exists; all other items shall be returned to their owners; in the event of disputed ownership of these articles, the dispute shall be decided by a single judge in a judicial session to which the interested parties have been summoned.

224. If pretrial investigators or prosecutors take exception to a bill of charges, they shall revise it, shall remove from the case record the bill of charges drawn up by the person who conducted the investigation, and shall return the original bill of charges to its author with notations as to wherein it is incorrect. In this event, a new bill of charges shall be served on the person under investigation. The list of witnesses to be called drawn up by the person who conducted the investigation may be altered by the pretrial investigator and prosecutor.

225. The approved bill of charges shall be submitted to a court together with the case record, and if the investigator** or prosecutor considers his personal participation in the judicial session necessary, he shall so inform the court.

**At present, only the prosecutor.

226. After the case has been submitted to the court, all motions regarding the case and appeals of actions taken by the investigative agencies or by the prosecutor shall be filed directly with the court. Appeals may be filed within 7 days from the day the action appealed became known to the person filing the appeal. Appeals concerning the selection of a measure to prevent evasion of justice and illegal acts shall be permitted until the judicial session on the given case ends.

227--232. Rescinded.

XX. COURT ACTIONS PRIOR TO TRIAL OF A CASE

**According to the text of the decree of the VTsIK and Sovnarkom RSFSR of 20 October 1929 (RSFSR Laws 1929, Law No 756). In applying this chapter, reference should be had to Sections 27, 28, and 32 of the "Law on the Judicial System of the USSR and of the Union and Autonomous Republics" (pp 106-107).

233. Upon receiving a statement that a crime has been committed, people's judges shall: (a) decline to initiate criminal proceedings when grounds for such action exist; or (b) submit the case to pretrial investigation with an indication of the circumstances which should be investigated; or (c) if they consider a pretrial investigation unnecessary, order a hearing of the case.

People's judges shall cite the essential elements of the case in the summons for the accused to appear in court.

Refusal by a people's judge to initiate criminal proceedings may be appealed to the okrug court within a week from the day of refusal; the chairman of the okrug court shall decide the appeal. The decision of the chairman of the okrug court shall not be subject to further appeal.

234. Upon receiving a case directly from the agency which conducted the investigation, a people's judges shall: (a) confirm the bill of charges, if he considers the bill of charges adequate, and order a hearing of the case in accordance with the provisions of Section 235; or (b) submit the case for further investigation, indicating the circumstances which should receive additional investigation; or (c) dismiss the case when grounds for dismissal exist.

235. Upon receiving a case from a pretrial investigator or prosecutor the judge who is court chairman for the case or the people's judge shall order a hearing of the case, shall so inform the persons participating in the case, and shall transmit a copy of the bill of charges to the person committed for trial. The copy of the bill of charges shall be served on the person committed for trial no later than 3 days before the hearing.

*236. Cases may be brought before preparatory executive sessions [of courts] in the event of: (a) substantial gaps in the pretrial investigation which cannot be corrected by judicial examination; or (b) disagreement as to the qualification of the acts attributed to the accused or as to the list of witnesses or expert witnesses to be called in for the judicial session; or (c) recognition that the arraignment is without grounds; or (d) disagreement with the measure to prevent evasion of justice selected by a prosecutor or pretrial investigator or with a prosecutor's resolution to dismiss a case.

*237. Preparatory executive sessions shall be conducted by a people's judge and two people's assessors in people's courts and by the designated chairman and two members of the court in other courts. The prosecutor or pretrial investigator** must be informed of the session. The rulings of preparatory executive sessions shall not be subject to appeal, but they may be protested by the presecutor or pretrial investigator** to the next higher court, where the question shall be decided finally.

**At present, only the prosecutor.

238. If a court agrees in preparatory executive session with the arraignment of the person under investigation, but not with the bill of charges, and does not consider it necessary to conduct a supplementary investigation, the chairman shall draw up a new bill of charges. If the preparatory executive session considers a case to have been insufficiently

investigated, it shall return the case for further investigation pursuant to a ruling giving the reasons for the action. If circumstances are found which require dismissal of a case, the court in preparatory executive session shall dismiss the case by means of a ruling giving the reasons for the action.

*239. The questions of admitting and naming defense counsel, summoning witnesses and expert witnesses to judicial sessions, motions of parties after the case is before the court, and remuneration of expert opinions and payment of court costs, in the event a case is dismissed before trial, shall be decided by the presiding judge for the case, acting alone, without privilege of appeal.

240. If the person committed for trial does not know the language in which the case is being conducted, the bill of charges shall be delivered to him translated into his native language. In such circumstances, all papers and declarations may likewise be submitted by any of the interested parties in their native language.

241. The trial of the case shall, as a rule, be conducted in the language of the majority of the local population. Moreover, judicial institutions shall be responsible for taking measures to make it possible to conduct cases in the language of the persons committed for trial if the latter belong to a national minority. In these cases, courts shall issue a special ruling on the language in which the case shall be conducted before a hearing for the case is ordered, being guided therein by the interests of comprehension by the court and the accused. If participants in a given case do not know the language in which the case is being conducted, the court shall appoint an interpreter and through him inform the interested persons of every procedural action.**

**See Section 114 of the RSFSR Constitution.

242. Courts shall be required to consider cases submitted to them no later than 2 weeks from the day the case is submitted, and if it is dealt with in preparatory executive session, no later than one month from the day it is submitted.

243--246. Rescinded.

Part 3. PEOPLE'S COURT PROCEDURE

XXI. ACTIONS BY PEOPLE'S JUDGES ACTING ALONE**

**In applying this chapter, reference should be had to the provisions of Sections 27 and 28 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" (see pp 106-107).

*247. People's judges acting alone shall decide the following questions:**

(1) Whether or not pretrial investigations of cases for which such investigation is not required shall be conducted;

(2) Whether or not police inquiries shall be conducted in cases which do not require pretrial investigation;

(3) Whether or not accused persons shall be committed for trial in cases submitted directly to a people's court (Section 233 of the Criminal Procedural Code);

(4) Whether to approve or alter measures to prevent evasion of justice taken by police inquiry agencies;

(5) Whether or not to initiate criminal proceedings.

**See the ukase of the Presidium, Supreme Soviet USSR of 19 December 1956, "On Liability to Punishment for Minor Acts of Hooliganism."

248. All other questions subject to decision by people's courts outside judicial session shall be considered in executive session** by people's courts comprising a presiding people's judge and two people's assessors.

**See footnote to Section 332.

A people's judge may submit for consideration in executive sessions of a people's court all questions subject to decision by him acting alone.

The prosecutor's office may participate in executive sessions of courts at its discretion.

249. Upon receiving a case from police inquiry agencies, (Section 105 of the Criminal Procedural Code) or from a pretrial investigator (Section 223 of the Criminal Procedural Code)**, a people's judge shall bring the case before a judicial session for trial on the merits. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

**The text of Section 223 having been amended, this reference is no longer in force.

250. People's judges shall set the dates for hearing cases and shall order that the parties and representatives of their interests, witnesses, and expert witnesses be summoned to judicial sessions. When the participation of defense councel in a case is required, a people's judge shall take steps to appoint a counsel for the defense through the proper institutions if the accused has not engaged counsel.

251. When two or more persons are accused in the same case, a single counsel may be appointed to represent them only in the event that the defense of one of them does not contradict the defense of the other; in the contrary event, a different defense counsel must be appointed for each defendant.

252. At the time that a counsel for the defense is appointed or admitted, the people's judge shall permit him to confer with a person committed for trial who is being held in custody.

The person committed for trial and his counsel, from the moment of his appointment or admission to the case, shall have the right to examine the case record and to copy from it any information they may need.

*253. Parties who submit motions that witnesses or expert witnesses be summoned or that other evidence be subpoenaed shall state what circumstances the witnesses, expert witnesses or evidence are required to clarify. Motions by parties should be approved if the circumstances to be elucidated might be of significance in the case (Section 113 of the Code of Criminal Procedure). If a motion by a party to the case is overruled, the grounds shall be set forth in the court's ruling.

254. If a people's court recognizes that the circumstances which the parties to the case wish to elucidate might be of significance in the case, it shall not refuse to summon the witnesses and expert witnesses or to subpoena other evidence to clarify such circumstances.

255. The provisions of Sections 253 and 254 of the Criminal Procedural Code apply both to cases in which a pretrial investigation has been conducted and to all other cases tried by the court.

256. In cases in which there has been no pretrial investigation, police inquiry, or committal for trial by a prosecutor (Section 223 of the Code of Criminal Procedure)**, people's judges may, before ordering a hearing of the case, call in the accused and explain to him the essentials of the charges against him and ask him whether he wishes to request that witnesses or expert witnesses be called in or that other evidence be subpoenaed.

**See footnote to Section 249.

The questions put to the accused, his answers to them, and the statements made by him shall be entered in the record. The requests and statements of the accused shall be considered and decided by the procedure specified in Sections 253 and 254 of the Criminal Procedural Code.

XXII. JUDICIAL SESSIONS

*257. The chairman of a judicial session shall direct the course of the session, shall exclude from the hearing of evidence and pleadings of the parties everything which is not material to the case being tried, and shall guide the hearing of evidence in the direction which is most likely to disclose the truth.

If any of the parties object to the actions of the chairman as infringing or violating their rights, the objection must be entered in the record.

258. Judicial sessions shall hear each case without interruption, except for rest periods. Other cases shall not be considered during such periods before the hearing of the given case has ended.

259. If the person committed for trial violates the procedure of the session, or if he refuses to comply with the orders of the chairman, the latter shall caution the person committed for trial that if he repeats the indicated actions he will be removed from the courtroom. If the caution fails, the person committed for trial may, by ruling of the court, be removed from the courtroom, after which the hearing shall continue. The persons committed for trial shall be informed of the sentence immediately after it is pronounced.

260. If a prosecutor or a person belonging to a collegium of defense counsels** fails to comply with the rulings of the chairman, the court shall notify the appropriate prosecution or defense institution in order that disciplinary action may be taken. If such persons continue to disregard the orders of the chairman, hearing of the case may be adjourned by court order if it does not seem possible to replace the person who has been removed from the courtroom without prejudice to the case. In the latter event the court shall consider the question of taking appropriate measures against such persons.

**Lawyers.

261. If the persons participating in a case, except those specified in the preceding Section (260), or persons who are not parties to the case, fail to comply with the rulings of the chairman, the chairman may order them removed from the courtroom. In addition, such persons may be fined or placed under arrest for a period not exceeding 2 weeks.

262. At the time set for the hearing of a case, the chairman, on ascertaining that the judges and secretary are present, shall open the session, shall announce what case is to be tired, and shall order that the person committed for trial be brought in.

263. A person committed for trial who is at liberty may be taken into custody at the opening of the judicial session or during it only if the court, by ruling stating the reasons for the action, considers it necessary to take him into custody as a measure to prevent evasion of justice.

264. The chairman shall make sure of the identity of the person committed for trial and shall ask him whether or not he has received a copy of the bill of charges or of the prosecutor's motion for arraignment.**

**The words "or of the prosecutor's motion for arraignment" are no longer in force (see Section 27 of the "Law on the Judicial System of the VSSR and of Union and Autonomous Republics," p 106).

265. In cases involving crimes punishable by confinement, the appearance of the person committed for trial shall be obliqatory, and the case may be heard in the absense of the person committed for trial only if:

(1) The person committed for trial has given his explicit consent; or

(2) It is shown that the person committed for trial has evaded delivery of the summons to appear in court or is concealing himself in order to avoid trial.

The appearance of the person committed for trial shall not be obligatory in other cases. However, a court may rule that the circumstances of a case require the appearance of the person committed for trial, in which case this requirement shall be noted in the summons to appear at the judicial session.

266. If a person committed for trial in a case for which his appearance is not obligatory does not appear, the court shall hear argument of the parties regarding the possibility of hearing the case in the absence of the person committed for trial, and shall rule either that the case be heard in the latter's absence or that the case be adjourned if his presence is deemed essential.

267. If a person committed for trial in a case in which his appearance is obligatory, with the exceptions specified in Subsections 1 and 2 of Section 265, or a person committed for trial in a case in which the court has deemed his appearance essential, shall fail to appear without sufficient cause, the court shall adjourn the hearing of the case and shall charge the court costs of the adjourned session to the person committed for trial.

In addition, the court may order that the person committed for trial be compelled to appear and may strengthen the measure taken to prevent evasion of justice, or it may impose such a measure if one has not been previously imposed. In imposing measures to prevent evasion of justice, courts shall observe the provisions of Sections 147 and 158 of the Criminal Procedural Code.

268. If the prosecutor or the defense counsel fails to appear and cannot be replaced by another person, the defense counsel being replaceable only with the consent of the accused, the hearing of the case shall be adjourned; if the persons who fail to appear without sufficient cause belong to a prosecutor's office or to a collegium of defense counsels**, the court shall notify the appropriate institutions in order that disciplinary action may be taken.

**Lawyers.

269. If a civil plaintiff seeking damages in criminal proceedings or representatives of his interests fail to appear, the civil suit shall be dismissed; if the case is adjourned, the injured party shall have the right to reinstitute the civil suit.

270. If the injured party or the representatives of his interests fail to appear in a case in which the prosecution of charges is the duty of the injured party (Section 10 of the Criminal Procedural Code), the case shall be subject to dismissal; however, the person committed for trial, may request that the case be tried on the merits, in which case the court must try the case.

271. Upon establishing the fact that the parties and the representatives of their interests are present, the chairman shall determine which of the witnesses or expert witnesses summoned for the case have appeared and why any who are absent have not appeared.

If the witnesses and expert witnesses summoned are not all present, the court shall hear the opinions of the parties concerning the possibility of hearing the case and shall rule on whether to continue the hearing of the case or adjourn it.

272. After deciding whether or not it is possible to hear the case in the absence of the witnesses or expert witnesses who have not appeared, the court shall ask the parties whether they wish to enter motions that other witnesses or expert witnesses, in addition to those already summoned for the judicial session, be summoned, or that other evidence be subpoenaed, or that evidence in the possession of the parties be admitted to the case.

Parties who enter such motions shall be required to indicate what circumstances the new witnesses or expert witnesses or evidence are intended to elucidate. These motions shall be decided by the court in accordance with the provisions of Sections 253 and 254 of the Criminal Procedural Code, and before a decision is taken the opinion of the opposing party shall be heard. Allowing parties to enter motions on the basis of this section shall not restrict their right to enter the same or different motions during the judicial session, depending on the course of the session.

273. When a court considers it necessary to summon new witnesses or expert witnesses or to subpoena additional evidence, it may either adjourn the hearing of the case of permit the parties themselves to obtain witnesses or expert witnesses or present new evidence without interruption of the hearings.

Motions entered by parties or motions to adjourn or to proceed with the hearing of the case shall be decided by the court regardless of whether the motions were first entered at the judicial session or earlier, and regardless of whether the motions were previously overruled in executive session.

274. Upon verifying the presence of the witnesses who have appeared, the chairman shall explain to the witnesses their duty to tell all they know about the case, shall caution them as to their liability to punishment for false testimony, shall obtain from them a signed statement that they have been so cautioned, shall order that they be removed from the courtroom to separate premises, and shall take steps to prevent their communicating with one onother concerning the case for which they have been summoned.

275. Expert witnesses who have appeared at the judicial session shall remain in the courtroom, except when the court on its own initiative or on the motion of one of the parties deems it necessary to have the expert witnesses removed from the courtroom.

276. Before the court hears evidence, the chairman shall explain to the injured party his right to file a civil action, unless such action has already been filed.

277. At the same time, the chairman shall explain to the person committed for trial his right to question the witnesses, expert witnesses, and other persons committed for trial, and to offer explanations both on the substance of the entire case and in regard to particular circumstances at any time during the hearing of evidence.

Note. The rights provided for by this section shall be enjoyed by the person committed for trial regardless of whether he is defended by counsel or whether the case is being heard without the participation of defense counsel.

278. After explaining their respective rights to the injured party and to the person committed for trial the chairman shall announce to the parties the composition of the court for the case in question, shall explain to the parties their right of challenge, and shall ask them whether or not they wish to present challenges.

279. The hearing of evidence shall begin with a reading of the bill of charges of the case. If pretrial investigation of the case has not been conducted, the hearing of evidence shall begin with the reading of the prosecutor's resolution to commit for trial, or** with the complaint (zhaloba) of the injured party, or with an explanation by the chairman of the charges against the person committed for trial.

**The words "the reading of the prosecutor's arraignment or" are no longer in force (see Section 27 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics," p 106).

280. The chairman shall then explain to the person committed for trial in expressions comprehensible to the latter the essence of the charges against him, shall ask whether the person committed for trial admits that the charges are true, and if the answer is in the affirmative the chairman shall recommend that he give an explanation regarding the essence of the charges against him. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

281. The court shall hear statements of the parties and shall rule on the procedure for examining the case through the hearing of evidence, whether to question first the witnesses or the persons committed for trial, and in precisely what order the persons committed for trial and the witnesses shall be questioned.

282. If the person committed for trial has agreed with the facts set forth in the bill of charges, admitted the charges against him to be true, and given his testimony, the court may omit further hearing of evidence and proceed to hearing the arguments of the parties.

If the person committed for trial does not admit that the charges against him are true and wishes to give an explanation concerning the substance of the charges, such explanation shall be given at the time the person committed for trial is questioned by the court. The person committed for trial shall retain the right to give explanations regarding the testimony of each individual witness at the time the latter is questioned regarding particular circumstances of the case, in accordance with the requirements of Section 277 of the Criminal Procedural Code. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

283. The questioning of the person committed for trial shall be conducted by the chairman and the other judges, then by the prosecutors, the civil plaintiff, the defense counsel, and other persons committed for trial in the same case.

Note. The questioning of a person committed for trial in the absence of other persons committed to trial shall be permitted only in exceptional cases, when the interests of arriving at the truth so require.

284. Witnesses shall be questioned separately, in the absence of other witnesses who have not yet been questioned. Before being questioned on the substance of the case, each witness shall be questioned in order to establish his identity and to determine his relationship to the case and to the parties.

Note. Participation in a [criminal] case as a civil plaintiff or as an injured party prosecuting the charge shall not preclude the possibility of questioning these persons as witnesses.

285. Questioning shall begin with instructions to the witness to tell all that is known to him personally about the case, omitting information the source of which he cannot state.

286. After a witness has given his testimony, the chairman shall invite the parties to question the witness on points which each of the parties find necessary to clarify, the chairman having the right to rule inadmissable questions immaterial to the case.

In questioning witnesses, the provisions of Section 166 of the Criminal Procedural Code shall be observed.

287. A witness shall be questioned first by the party upon whose request he has been summoned, and then by the other parties. Witnesses summoned on the initiative of the court shall be questioned first by the prosecutor, then by the other parties.

288. Each party may submit additional questions to the witness to clarify or amplify answers given to questions asked by another party.

289. The chairman and members of the court may question witnesses both before and after questioning by the parties has been completed, [i.e.] at any time during the questioning.

Further questioning of witnesses, when necessary, shall be conducted in accordance with the procedure prescribed in Sections 284--288 of the Criminal Procedural Code until the court and the parties have exhausted all questions.

290. Any witness may be questioned again in the presence of other witnesses or in confrontation by them.

291. Witnesses who have been questioned may not leave the court before the hearing of evidence has ended without the express permission of the chairman. The chairman may permit witnesses who have been questioned to leave the court before the hearing of evidence has ended only with the consent of the parties.

292. While testifying, witnesses may have with them written notes when the testimony involves figures or other data difficult to retain in the memory.

293. Witnesses shall be permitted to read written documents in their possession which are material to the testimony given; these documents shall be shown to the parties and, by order of the court, may be appended to the record.

294. In the event of contradictions between the testimony given by a person committed for trial during the hearing of evidence and the testimony given at the pretrial investigation or police inquiry, the latter may be read at the discretion of the court or upon the demand of any of the parties.

Note. If the person committed for trial refuses to testify during the hearing of evidence, his testimony at the pretrial investigation or police inquiry may be read.

295. In hearing a case in the absence of the person committed for trial, or in the event of the death of one of the persons committed for trial, the testimony given at the pretrial investigation or police inquiry by the absent or deceased person committed for trial may be read at the discretion of the court or upon the demand of any of the parties.

296. When any circumstances have been forgotten or when contradictions exist between the testimony given by a witness during the hearing of evidence and that given during the pretrial investigation or police inquiry, the testimony of the witness at the pretrial investigation or police inquiry may be read at the discretion of the court or upon the demand of any of the parties.

297. Testimony given at the pretrial investigation or police inquiry by witnesses summoned to appear at the judicial session but who have failed to appear may be read at the discretion of the court or upon the demand of any of the parties.

Note. Testimony of witnesses who have not been summoned to the judicial session may be read only by special court ruling.

298. Expert witnesses shall be questioned in accordance with the provisions of Sections 171--173 of the Criminal Procedural Code.

After the opinions rendered by the experts have been stated orally, they shall be submitted in written form and appended to the record.

The opinions of expert witnesses are not binding on the courts, but if a court disagrees with an expert opinion, the reasons must be stated in detail in the sentence or special ruling.

299. Physical evidence may be inspected and written documents may be read either on the initiative of the court or upon a motion of the parties at any point in the hearing of evidence, depending upon the stage of proceedings.

300. If an expert opinion is considered insufficiently clear or incomplete, or if expert witnesses disagree, the court on its own initiative or upon the motion of any of the parties may order that a new expert opinion be rendered and may summon new expert witnesses for that purpose; for an expert medical opinion, the request shall be submitted to the guberniya department of health. When necessary, the hearing of the case may be adjourned.

301. If it is necessary to travel to the scene of the crime in order to conduct an inspection, the court may entrust such inspection to one of the members of the court, or at the time set for the inspection it may travel there in full complement. Upon arriving, the chairman shall open the judicial session and conduct the inspection, during which the parties shall have the right to direct the attention of the court and to demand that everything to which they consider it necessary to direct the court's attention be entered in the record.

302. If a court considers that a case is insufficiently clear and that further evidence can be obtained, it may, on its own initiative or on the motion of any of the parties, either adjourn the hearing of the case and require new evidence or return the case to the pretrial investigator or police inquiry agency for further investigation.

In the latter event, upon completion of the supplementary investigation and before the case is heard on the merits, the case shall be submitted for committal of the accused for trial in accordance with the procedure prescribed in Chapter XX of the Criminal Procedural Code.

303. After hearing all the evidence in the case, the chairman shall ask the parties whether or not they have anything to add to the evidence heard, and then, after considering and sustaining or overruling the motions entered, he shall declare the hearing of evidence closed.

304. After the evidence has been heard, the court shall proceed to hear the argument of the parties. The argument of the parties shall consist of speeches, first by the prosecutor, then by the civil plaintiff, and finally by the defense counsel or by the person committed for trial himself, if the latter is not represented by counsel.

305. During the argument the parties may not introduce new matter which was not heard during the preceding hearing of evidence. If it should be necessary to introduce new evidence, the parties may move that the hearing of evidence be reopened, which motion shall be ruled on by the court in the light of the circumstances of the case.

306. Prosecutors may decline to prosecute a charge if they conclude that the facts adduced during the hearing of evidence do not support the charges. The refusal of a prosecutor to prosecute does not relieve the court of the responsibility to continue the hearing of the case and to decide on general grounds whether or not the charges are true and whether or not the person committed for trial is liable to punishment.

307. At the conclusion of the argument, the parties may exchange one round of rebuttal. The defense counsel or the person committed for trial, if he is not represented by counsel, shall always have the right to deliver the concluding speech.

308. The chairman shall halt the parties if their speeches go beyond the bounds of the case being tried; he may not, however, limit the length of speeches by the parties to a set time.

309. After the concluding speech has been delivered by the defense counsel, the chairman shall declare the argument of the parties terminated and shall permit a final statement by the person committed for trial, after which the court shall retire and pass sentence. During his final statement, the person committed for trial shall not be questioned by the court or by the parties.

Note. If the person committed for trial reveals new circumstances of substantial importance to the case in his final statement, on its own initiative or upon the motion of the parties the court may reopen the hearing of evidence in accordance with Section 305 of the Criminal Procedural Code.

310. Upon the conclusion of the argument, but before the court retires to its chambers, the parties may submit to the court in written form their formulation of the charges in the light of the facts ascertained during the hearing of evidence.

The formulation of the charges submitted by the parties shall not be binding on the court, which shall proceed in such cases in accordance with the provisions of Chapter XXIII of the Criminal Procedural Code.

XXIII. ON MODIFYING CHARGES AND BRINGING NEW PERSONS INTO COURT

311. Only persons committed for trial before the opening of a judicial session shall be tried in that judicial session, and then only on the charges originally preferred against them. If it is necessary to modify or add to the original charges, or if new persons are brought into court, the provisions set forth below shall be observed.

*312. If a court learns during a judicial session that the person committed for trial has committed a crime other than the one for which he is being tried and which is not connected with the original crime, it shall initiate a case on the new charges only if it considers a police inquiry or pretrial investigation of the case essential or when the new charges entail a more severe penalty than the original charges.

If the new charges are closely connected with the original charges and the court considers it necessary to conduct a police inquiry or pretrial investigation of the new charges, the court shall suspend the hearing of the case and submit the entire case for investigation, committal for trial, and trial according to general procedures from the beginning. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

313. If a court learns during a judicial session new circumstances which require altering the original formulation of the charges and this alteration involves a more severe penalty, and if either party

so moves, the court shall suspend the hearing of the case and shall submit it for investigation, committal for trial, and trial under general procedures. If the alteration of the original charges does not involve a more severe penalty, the court shall continue the hearing of the case and shall pass sentence according to the new formulation of charges.

314. A court which finds that a witness who has been questioned has given false testimony shall enter in the record, as nearly verbatim as possible, the testimony of the witness, and, after hearing the prosecutor's opinion, if he is participating in the case, shall order that the witness be prosecuted, citing the grounds for the action, shall so inform the witness, and shall submit the case for investigation, committal for trial, and trial separately from the given case in accordance with general procedures. The court may invoke measures to prevent evasion of justice by the witness under prosecution.

*315. If during a judicial session a court discovers indications that a crime has been committed by a person not committed for trial in the given case, the court shall hear the opinion of the prosecutor, if he is participating in the case, and shall issue an order to prosecute the persons in question, citing the grounds for the action, after which the court shall submit the case for investigation, committal for trial, and trial in accordance with general procedures and separately from the given case, and shall notify the person against whom proceedings have been instituted thereof. The court may take measures to prevent evasion of justice by the person under prosecution.

*316. If the newly preferred charges are closely connected with the charges preferred against the persons committed for trial in the given case, and when separate trial of these charges does not seem possible, the court shall suspend the hearing of the case and shall submit the entire case, relative both to the persons already committed for trial and to the person against whom proceedings have newly been instituted, for investigation, committal for trial, and trial in accordance with general procedures.

*XXIV. PASSING SENTENCE

317. Only judges who are members of the court which is trying the case in question may be present in the conference chamber during the conference on and rendering of the sentence; neither alternate judges, nor the secretary of the judicial session, nor any other person shall be permitted in the conference chamber during the conference.

318. Rescinded. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

319. Courts shall base sentences exclusively on the facts of the case ascertained in judicial session.

Judges shall evaluate the evidence in the given case according to their inner conviction, in the light of all the circumstances of the case taken together.

*320. In passing sentence, courts shall decide the following questions:

(1) Whether or not the act attributed to the person committed for trial occurred;

(2) Whether or not the act contains the criteria of a crime;

(3) Whether or not the person committed for trial committed the act;

(4) Whether or not the person committed for trial is subject to punishment for his act;

(5) Precisely what punishment should be imposed on the person committed for trial and whether or not he should be subjected to the punishment;

(6) Whether or not a civil suit which has been filed should be granted, or, if a suit has not been filed, whether or not measures should be taken to secure execution of judgment on a civil suit which might be filed;

(7) The disposition of physical evidence;

(8) To whom court costs should be charged.

321. In the event that the question of the imputability of the person committed for trial has arisen during the pretrial investigation or hearing of evidence, the court is particularly obligated in passing sentence to pass upon the imputability of the person committed for trial, even though that question may have already been decided in the executive session of the court under the provisions of Chapter XVI of the Criminal Procedural Code.**

**The words "under the provisions of Chapter XVI of the Criminal Procedural Code" became void when that chapter was rescinded.

322. If the court determines that, at the time of committing the act attributed to him, the person committed for trial was not in a condition rendering him imputable, it shall dismiss the case and discuss whether or not it is necessary to take measures of social defense against the person committed for trial.

If the court determines that the person committed for trial became mentally ill after committing the act attributed to him, it shall adjourn the case until the person committed for trial has recovered, or shall dismiss the case if it is determined that the illness is incurable.

323. A chairman shall pose questions for decison by the court in the order stipulated in Section 320 of the Criminal Procedural Code, and each question shall be so formulated as to permit only one of two answers.

324. A conference of judges over which the chairman shall preside shall precede the passing of sentence. In passing sentence none of the judges may abstain from voting on any individual question. The chairman shall vote last.

325. All questions shall be decided by a simple majority vote. A judge who finds himself in the minority may express in written form his dissenting opinion, which shall be appended to the sentence but not made public.

If, during discussion in the conference chamber, the court deems it necessary to clarify any circumstance by additional examination of witnesses or by any other judicial action, it shall, without passing sentence, reopen the judicial session on the case and permit the parties and the person committed for trial to give additional explanations with regard to the new proceedings.

*326. Courts shall pass sentences:

(1) Imposing a measure of social defense on a person committed for trial;

(2) Relieving a person committed for trial who has been found guilty, of measures of social defense because of an amnesty, on the basis of the statute of limitations, or on the grounds specified in Section 8 of the RSFSR Criminal Code;

(3) Acquitting a person committed for trial if:

a. The occurrence of the criminal act itself is not established or the criteria of a crime are absent from the acts of the accused; or

b. There is insufficient evidence to prosecute the person committed for trial.

If a court finds that the circumstances of a case make it inexpedient to impose a measure of social defense on a person committed for trial who is found guilty, provided that the conditions specified in Subsection 2 of this section are absent, it may submit a motion stating its reasons to the Presidium of the VTsIK requesting that the convicted person be relieved of any measure of social defense. (RSFSR Laws 1933, Law No 135, dated 10 June 1933)**

**See Section 49, Clause j, of the USSR Constitution, and Section 33, Clause i, of the RSFSR Constitution.

*327. In regard to civil suits filed in the course of criminal proceedings, a court shall:

(1) Refuse to entertain the action if the person committed for trial was acquitted because his act did not contain the criteria of a crime; or

(2) Enter a decision for the defendant if the person committed for trial was acquitted on the grounds that the occurrence of the criminal act was not proved; or

(3) Enter a decision for the plaintiff or for the defendant in all other instances, depending on whether the basis and amount of the civil action are proved.

*328. Whenever a criminal court refuses to entertain a civil action, the injured party shall have the right to file his claim de novo according to the rules of civil procedure. If, during the trial of the criminal case, the civil claim is decided against the plaintiff, the same claim may not again be filed under the rules of civil procedure.

*329. If the fixing of the amount of damages claimed requires postponement of the hearing in the criminal case or necessitates obtaining additional material, the court may recognize the right of the injured party to satisfaction of his suit and transfer it to the appropriate court for determination of the amount of damages under the rules of civil procedure. (RSFSR Laws 1927, Law No 332, dated 6 June 1927)

330. If a civil suit has not been filed, but the court finds that damage or loss were caused to the injured party, in handling down a conviction the court may order that steps be taken to secure the filing of a civil action in the future.

331. Objects obtained by criminal acts which do not constitute physical evidence in a case shall be returned to their owners, even though the latter have not filed a civil suit. In the event that the ownership of such articles is disputed, the dispute shall be resolved by civil suit and the objects shall not be released until the judgement delivered under civil procedure becomes final and executive.

In dealing with physical evidence, the courts shall be guided in passing sentence by the provisions of Section 69 of the Criminal Procedural Code.

332. In ruling on court costs, courts when passing sentence shall be guided by the provisions of Sections 88--90 of the Criminal Procedural Code. In the sentence the court shall confine itself to indicating against whom court costs shall be charged; the court in executive session shall conduct a precise calculation of costs in order to determine the amount required from each person.**

**By decree of VTsIK and Sovnarkom RSFSR of 20 October 1929 (RSFSR Laws 1929, Law No 756), preparatory executive sessions of courts replaced executive sessions for the purpose of deciding questions relative to actions preparatory to hearing cases.

This decree did not change the procedures for resolving other questions subject to the jurisdiction of executive sessions. In view of this, the Criminal Procedural Code preserves both the term "executive session" and the term "preparatory executive session." All rules relative to the composition of preparatory executive sessions and to the procedure for trying cases and appealing the rulings of preparatory executive sessions (Sections 236--238) shall also be applied to sessions termed executive in certain sections of this code.

333. After deciding all questions, the court shall proceed to draw up the sentence. Sentences shall consist of an opinion and a decision.

*334. The portion of the sentence consisting of the opinion shall contain a summary of the charges of which the person committed to trial is acquitted or which are considered to have been proved; the age, the given name, patronymic, and family name or alias [nickname] of the person committed for trial; the class and social position of the injured party; the place, time, and means of commission of the crime; and such other distinguishing facts as may be involved in terms of the circumstances of the case.

The portion of the sentence consisting of the decision shall indicate the identity of the person committed for trial, whether he is acquitted or convicted of the charges against him, and the punishment selected by the court.

335. Punishment shall be specified in such a manner that, in executing the sentence, no doubt can arise regarding the kind and amount of punishment prescribed by the court.

When a court deems it necessary to mitigate punishment, the sentence shall state the basic punishment, the grounds for mitigating it, and the kind and amount of punishment finally chosen by the court.

If a person committed for trial has been convicted of several crimes, the sentence shall state the punishment designated for each crime individually and the punishment finally fixed by the court.

If the person committed for trial has been tried on several charges and convicted of only a part of them, the sentence shall state precisely of which charges he has been acquitted and of which he has been convicted.

336. An indication of the procedure and time limits for appeal shall be specified in sentences after the part containing the decision.

337. Every sentence shall be written out by hand by one of the judges and signed by all the judges who participated in passing it.

338. Sentences shall be pronounced in the name of the RSFSR.

339. After the sentence has been signed, the court shall return to the courtroom where the chairman shall read the sentence publicly. All persons in the courtroom, including the members of the court, shall stand during the reading of the sentence.

340. Upon passing a sentence aquitting a person committed for trial or relieving him of punishment, immediately after pronouncing the sentence the chairman shall declare said person at liberty with regard to the case in question; any measures to prevent evasion of justice that have been taken against the person committed for trial with regard to the given case shall be immediately revoked.

*341. Upon passing a sentence condemning the person committed for trial to punishment, the court must consider the question of measures to prevent evasion of justice and may, for the period until the sentence becomes final and executive, alter a previously adopted measure to prevent evasion of justice or impose such a measure if one was not previously imposed; in so doing the provisions of Sections 147, 158, and 161 of the Criminal Procedural Code shall be observed.

342. Sentences condemning persons committed for trial to punishment shall be executed only after they become final and executive. Sentences shall be considered to have become final and executive upon expiration of the time limit established for filing an appeal if no appeal has been filed; if an appeal has been filed, the sentence shall become final and executive on the day the appeal is dismissed without further recourse by an appellate court.

If only a part of a sentence is appealed, the remainder of the sentence shall be considered to have become final and executive on the day on which the time limit established for appeal expires.

343. The term of a sentence to confinement shall be reckoned from the day on which the sentence is executed. If the person committed for trial was being held in custody when the sentence was passed or was subjected to pretrial confinement, the term of the punishment shall be reckoned from the day on which person committed for trial was taken into custody.

XXV. APPEALS OF RULINGS AND SENTENCES OF PEOPLE'S COURTS

344. Appeals of sentences and rulings of courts shall be directed to the appellate division of the guberniya court in whose area of jurisdiction the given people's court is situated and shall be submitted to the latter.

People's courts shall return to the appellant appeals submitted after the time limit has expired; people's courts shall forward appeals submitted within the time limit to the appellate division of the guberniya court within 3 days.

Submission of an appeal within the time limit directly to the appellate division of the guberniya court shall not bar consideration of the appeal by the latter.

345. If the time limit for appeal is not met for sufficient cause, the appellant may petition the same court to renew the appeal period. Such petititons shall be considered by the court in executive session,** and the ruling of the court may be appealed to the guberniya court in accordance with general procedures.

**See footnote to Section 332.

346. All appeals of the sentences and rulings of people's courts and of the rulings of people's judges shall be submitted to the kray (oblast) court within 5 days from the day the sentence or ruling is handed down.

When a case is tried in the absence of the person committed for trial, an appeal must be submitted by the latter within 5 days from the day on which a copy of the sentence was served on him. In this case, a copy of the sentence shall be sent to the person committed for trial within 24 hours from the time the sentence was passed.

The filing of an appeal of a sentence shall operate to suspend the execution of the sentence appealed. The filing of an appeal of any other ruling of a people's court or resolution of a people's judge shall operate to suspend the execution of the ruling or resolutin appealed only if the people's court or people's judge considers it necessary in the light of the circumstances of the case. (RSFSR Laws 1933, Law No 107, dated 4 May 1933)

*347. Orders of people's courts on imposing penalties in accordance with Section 261 and on the taking of measures to prevent evasion of justice in cases covered by Sections 267 and 341 of this code, shall be final and shall not be subject to appeal, but can be quashed or modified ex officio [by a higher court]. (RSFSR Laws 1937, Law No 136, dated 20 September 1936)

*348. Witnesses, expert witnesses, and interpreters on whom penalties have been imposed by rulings of a people's court for failure to appear, shall submit petitions to be relieved of such penalties and explanations of their reasons for not appearing to the same people's court. These petitions shall be considered by the court in executive session**; the ruling of the court shall be final and not subject to appeal.

**See footnote to Section 332.

*349. Sentences of people's courts may be appealed by any of the interested parties solely on the basis of a formal violation of the rights and interests of the given party during proceedings in the case or the trial of the case; they shall be known as appeals seeking quashing of judgments (kassatsionnyye zhaloby) and shall not touch on the substance of the sentence. All other appeals against rulings of people's courts or resolutions of people's judges shall be called appeals against interlocutory orders (chastnyye zhaloby). Appeals of sentences filed by prosecutors shall be known as protests seeking modification or quashing of judgments (kassatsionnyye protesty), and other appeals filed by prosecutors shall be known as protests against interlocutory orders (chastnyye protesty). Prosecutors shall also have the right to file protests seeking modification or quashing of judgments on the basis of violations of the rights and interests of all parties participating in a case.

350. Appeal of the substance of a sentence over and above citation of violations of laws which occurred in court during the trial of the case, or even appeal of the substance of a sentence without citation of formal violations, shall not relieve a guberniya court of the responsibility to review the appeal and all the proceedings in the case.

XXVI. SPECIAL PROCEDURES IN PEOPLE'S COURTS

1. Sentences in Absentia

351--359. Rescinded. (RSFSR Laws 1933, Law No 107, dated 4 May 1933)

2. Continuous sessions of People's Courts**

**The "Law on the Judicial System of the USSR and of Union and Autonomous Republics" does not provide for continuous sessions of people's courts.

360. Trials of cases in continuous session shall be conducted by a people's judge and two people's assessors.

361. All cases involving accused persons who have been taken into custody which, in the opinion of the agencies which have taken them into custody, require no special investigation or in which the defendant has admitted his guilt, shall be submitted to continuous-session courts. Continuous sessions of courts shall receive, together with a case, the accused, physical evidence on the case, and, if possible, the witnesses.

Note. The appointment of a defense counsel is not required in cases tried in continuous session.

362. A people's court may accept a case for immediate trial in continuous session only if it considers the materials of the case completely adequate and the case completely clarified.

363. If a people's court considers immediate trial of a case in continuous session not possible, it shall order that the case be submitted for further investigation and trial in accordance with general procedures. In so ruling, the people's court shall consider the question of taking measures to prevent evasion of justice by the person committed for trial.

364. If, during trial of a case in continuous session, the person committed for trial, in refuting the charges against him, refers to evidence which cannot be considered at the same session, the hearing of the case shall be adjourned and the case transferred for trial in accord with general procedures, whereupon the people's court shall consider the question of taking measures to prevent evasion of justice by the person committed for trial.

365. Trials of cases in continuous sessions shall be conducted according to the rules established for proceedings in people's courts. Rulings and sentences of people's courts issued in continuous sessions may be appealed in accordance with general procedures to guberniya courts.

3. Summary Judgments**

**The "Law on the Judicial System of the USSR and of Union and Autonomous Republics" does not provide for the adjudication of criminal cases by summary judgment.

366. In the event that the violation is clearly incontestable, people's courts shall pass sentences by summary judgment in cases involving crimes covered by Sections 64, 92, 185, 186, 187, 189, 190, and in Section 191, Paragraph 1 of the Criminal Code in accordance with the following sections. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

367. Summary judgments shall be passed without summoning the parties, but if the prosecutor and the person committed for trial are present at the hearing of the case they shall be permitted to give explanations if they so request.

Note. Summary judgments shall not be passed in cases in which a civil suit has been filed against the accused.

368. The following must be set forth in a summary judgment: the given name, patronymic, and family name or alias of the convicted person, his age, the criminal act committed by him, the place, time, and means of committing the criminal act, the section of the Criminal Code covering the given criminal act, and the punishment prescribed by the court.

369. Summary judgments shall enter into force and be executed immediately after they are passed.

370. An appeal seeking quashing of a summary judgment may be filed in the kray (oblast) court by the convicted person within 5 days from the day a copy of the summary judgment is served on him. (RSFSR Laws 1933, Law No 107, dated 4 May 1933)

371. Upon the motion of a convicted person who has appealed a summary judgment to a guberniya court, the people's judge who rendered the summary judgment may suspend execution of the order until the case has been decided in guberniya court; in these cases the judge shall require that the convicted person guarantee execution of the summary judgment by posting a sum of money equal to the fine imposed, or in the event of a sentence to forced labor [not in confinement], a sum to be fixed at the discretion of the judge. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

372. Rescinded. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

XXVII. REOPENING CASES ON THE BASIS OF NEWLY DISCOVERED EVIDENCE

373. Cases in which sentences have become final and executive may be reopened only on grounds that new circumstances have come to light which are deemed to:

(1) Establish the spuriousness of the evidence on which the sentence is based;

(2) Show that the judges who passed the sentence committed criminal abuses;

(3) Constitute any other kind of evidence which, alone or in conjunction with circumstances already proved, establishes the innocence of the convicted person or his participation in a crime less serious or more serious than the one of which he has been convicted. All circumstances shall be considered new which could not have been known to the court when the sentence was passed.

374. Review of sentences of acquittal shall be permitted only within a period of one year from the day on which the new circumstances cited in Subsection 3, Section 373, are discovered, and no later than 5 years from the day the sentence becomes final and executive.

375. Criminal abuses by judges, false testimony, false expert opinions, and the spuriousness of other evidence shall constitute grounds for reopening a case only if these circumstances have been established by another judicial sentence which has become final and executive.

376. Only a prosecutor may move for the reopening of a case which has resulted in acquittal. Review of a conviction may be initiated upon the motion of the following: the prosecutor, the convicted person, his defense counsel, his relatives, or those trade union or public organizations of which the convicted person was or is a member.

The death of the convicted person shall not prevent a reopening of the case if there has been a conviction.

377. Motions to reopen a case shall be submitted by the interested persons or institutions to the prosecutor. Prosecutors, on receiving such petitions, or on their own initiative if they consider it necessary to raise the question of reopening a case, shall conduct the necessary investigation personally or through police inquiry or pretrial investigation agencies.

378. Upon completion of the investigation, if the prosecutor deems it necessary to raise the question of reopening the case, he shall submit the records of the investigation and his conclusions directly to the Appellate Collegium of the Supreme Court.

379. If a sentence is revoked by the Supreme Court, in conducting the retrial of the case the court shall try the case and pass sentence in accordance with general procedures. The sentence passed when a case is retired may be appealed in accordance with general procedures.

Part 4. PROCEDURE IN GUBERNIYA COURTS AND IN TRIBUNALS**

**The provisions of Part 4 and Part 5 governing the activity of guberniya courts shall be fully applicable (in the absence of special reservations) to kray, oblast, and autonomous-republic courts; the provisions governing the activities of guberniya prosecutors shall likewise apply to kray, oblast, and corresponding prosecutors. This is not stipulated in the text which follows.

XXVIII

1. Proceedings as a Court of Original Jurisdiction

380. Proceedings in guberniya courts shall be governed by the established procedures governing proceedings in people's courts, with the exceptions set out in the following sections. The same rules which apply to guberniya courts shall apply to tribunals unless the law specially provides otherwise.**

**See the "Statute on Military Tribunals and the Office of the Military Prosecutor" (USSR Laws 1926, Law No 413).

381. The admission of prosecution and defense to judicial sessions in cases tried in guberniya courts shall not be obligatory and shall be decided in each instance in executive session** depending upon the complexity of the case, the extent to which the crime has been proved, or the degree of special political or public interest in the case.***

Guberniya courts shall admit or appoint a defense counsel if a prosecutor is admitted to a case.

Refusal to accept defense counsel by the person committed for trial shall not prevent the admission of a prosecutor to the case.

382. Guberniya courts may refuse to admit to the defense any person who, although formally competent to serve, is considered not qualified to speak on the given case because of its special character.

**See footnote to Section 332.

***According to Section 115 of the RSFSR Constitution, the defendant is guaranteed right to counsel.

383. Cases may be accepted for trial by guberniya courts only in strict accordance with provisions relative to jurisdiction (Section 26 of the Criminal Procedural Code)**. Deviations from these provisions shall be permitted only as follows:

a. For guberniya courts and tribunals, when there is no court of the category which has jurisdiction over the case in the given area of jurisdiction;

b. By special order of the Presidium of the VTsIK, the Supreme Court, or the Prosecutor of the Republic that a case not under the jurisdiction of the guberniya court or tribunal be transferred to it for trial.

**See Section 32 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" (p 107) and the annotation on Section 24.

2. Pretrial Investigation**

**In applying this Subchapter, it must be kept in mind that the investigative machinery has been transferred to the Office of the Prosecutor.

384. Pretrial investigations of cases under the jurisdiction of guberniya courts shall be conducted by people's pretrial investigators or pretrial investigators attached to guberniya courts and working under the close supervision of the appropriate prosecutor. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

385. Investigators attached to guberniya courts may ascribe to acts of police inquiry the force of acts of pretrial investigation and omit conducting a pretrial investigation, or else limit themselves to individual investigative actions if they consider a pretrial investigation unnecessary because of the clarity of the case or because the accused has confessed (Section 109 of the Criminal Procedural Code); if the prosecutor does not agree with such a resolution of the investigator, the prosecutor may order the investigator to conduct a complete pretrial investigation or individual investigative actions.

386. The resolutions and orders of pretrial investigators attached to guberniya courts relative to proceedings in cases being conducted by the latter shall be binding on all investigative and detective (sledstvennykh i rozysknykh) agencies without exception in the republic. Investigators attached to guberniya courts shall not be limited to the boundaries of their precincts, but may conduct investigations throughout the entire territory of the RSFSR on the basis of a certification signed by the chairman of the guberniya court and by the prosecutor attached to the guberniya court.

387. Prosecutors attached to guberniya courts who are notified by a rayon people's pretrial investigator of the initiation of the investigation of a case under the jurisdiction of the guberniya court may transfer the case to a pretrial investigator attached to the guberniya court, in which event they shall order one of the investigators attached to the guberniya court to conduct the pretrial investigation of the given case. Simultaneously, the prosecutor shall notify the rayon people's pretrial investigator that the case has been withdrawn from him and order him to submit the case to the proper investigator, which order shall be binding upon the rayon investigator.

388. Rescinded. (RSFSR Laws 1923, Law No 480, dated 10 July 1923)

*389. Filing of civil suits when cases are tried by tribunals shall not be permitted. Tribunals which perceive that a crime has caused damage or loss to the Republic or to private persons may, when passing sentence, order that steps be taken to secure the filing of a civil action in the future. [Comment: Rescinded by an ukase of the Presidium, Supreme Soviet USSR dated 31 January 1958, Vedomosti Verkhovnogo Soveta RSFSR 1958, Law No 81.]

3. Committal for Trial and Actions Preparatory to Judicial Sessions

390. All cases subject to trial in judicial session by guberniya courts shall first be considered in executive session** in order to determine whether to dismiss the case or commit the accused for trial. In deciding these questions a guberniya court must hear the opinion of the prosecutor.

**See footnote to Section 332.

391. A list of persons subject to summons to judicial session shall be drawn up by the guberniya court in executive session. Guberniya courts may omit to summon persons questioned in the course of pretrial investigations or police inquiries whose testimony raises no doubt as to creditability. Witnesses whose testimony is material to the case and at the same time suffers from substantial incompleteness, is contradicted by the testimony of other witnesses, or seems confused, must be summoned to the judicial session.

The question of summoning expert witnesses to judicial session shall also be decided in executive sessions of guberniya courts.

392. Copies of the bill of charges shall be served on each of the persons committed for trial no later than 3 days before the case is heard.

4. Judicial Sessions and Appeals

393. Cases may be heard in guberniya courts in the absence of the person committed for trial, in addition to those cases covered by Subsections 1 and 2, Section 265 of the Criminal Procedural Code, in the event that the person committed for trial is outside the boundaries of the RSFSR. If he should return to the RSFSR and so requests, his period for appeal must be extended; if the case has been tried by a tribunal where appeal seeking quashing of a judgment is not permitted, the case shall be subject to review by ex-officio action [of a higher court].

394. In trying a case, guberniya courts may terminate the questioning of a witness, or of witnesses, at any point in the examination if they consider that the testimony of witnesses questioned fully confirms the circumstances which any witness was summoned to establish.

395. Documents already in the case file, new documents, and testimony given at pretrial investigations and police inquiries by witnesses, whether or not the latter are summoned to the judicial session, may be read in court at the discretion of guberniya courts, acting either on their own initiative or on motions of the parties. Likewise, the testimony given by the person committed for trial at the pretrial investigation or police inquiry may be read in court at the discretion of guberniya courts acting either on their initiative or on motions of the parties.

*396. Parties shall have the right to refer in their argument to all documents and testimony in the case, irrespective of whether or not such documents are read in the judicial session. Likewise, in passing sentence, guberniya courts may take into consideration such documents and testimony, irrespective of whether or not they have been read at the judicial session.

397. Irrespective of previous ruling regarding the admission of parties to participation in judicial sessions, guberniya courts may order that the argument of the parties not be heard, if they consider the case sufficiently clear from the hearing of evidence.

398. Judicial sessions of guberniya courts shall be permitted to return cases for further investigation only if they establish that the material in the case is so incomplete that it cannot possibly be clarified at the same judicial session; in all other instances, cases shall not be returned for further investigation. In returning cases for further investigation, guberniya courts shall issue a ruling stating the reasons for the action.

399. Records of executive** and judicial sessions of guberniya courts shall be maintained on the basis of the provisions of Sections 77--81 of the Criminal Procedural Code.

**See footnote to Section 322.

Copies of the record of a judicial session may be given to parties only if they file an appeal seeking quashing of the judgment; in lieu of copies of the record, excerpts may be given covering the circumstances entered in the record upon the motions of parties or refused entry in the record.

400. Sentences of guberniya courts may be appealed by parties by means of appeals seeking quashing of judgments. The time limits for filing appeals shall be as follows: for prosecutors, within 72 hours from the time the sentence is pronounced; for a person committed for trial, within 72 hours from the time a copy of the sentence is served on him. Copies of sentences must be served on persons committed for trial within 24 hours from the time the sentence is pronounced. Motions to extend the period for filing appeals seeking quashing of judgment shall be submitted to the guberniya court which passed the sentence and shall be decided in executive** session.

**See footnote to Section 332.

401. After receiving an appeal or protest seeking modification or quashing of judgments, guberniya courts shall submit the entire case to the Appellate Collegium of the Supreme Court within 24 hours, and in so doing, guberniya courts may append to the case their remarks concerning the appeal or protest.

402. The filing of an appeal or protest seeking modification or quashing of the judgment shall suspend execution of the sentence; in such cases, guberniya courts shall be responsible for taking appropriate measures to prevent evasion of justice.

403. Concurrently with the submission of a case with an appeal or protest seeking modification or quashing of the judgment to the Supreme Court, the chairman of the guberniya court may, if he notes in the proceedings a clear violation permitted by the given division of the guberniya court, but without halting the submission of the case to the Supreme Court, give appropriate instructions to the division of the guberniya court which passed the sentence, calling for that purpose a plenary session of the guberniya court and notifying the Supreme Court of the fact.**

**The "Law on the Judicial System of the USSR and of Union and Autonomous Republics" abolished plenary sessions in kray and oblast courts and in union-republic and autonomous-republic supreme courts. The procedure for protesting the sentence of a kray (oblast) court which has become final and executive is provided for by Section 16 of that law (p 103). See also Clause b, Section 11, of the "Statute on the Supreme Court USSR" (p 115).

404. If a plenary session of a guberniya court observes substantial errors in a sentence passed by one of its divisions, it may suspend execution of the sentence and submit the case to the Supreme Court for action ex officio.**

**The "Law on the Judicial System of the USSR and of Union and Autonomous Republics" abolished plenary sessions in kray and oblast courts and in union-republic and autonomous-republic supreme courts. The procedure for protesting the sentence of a kray (oblast) court which has become final and executive is provided for by Section 16 of that law (p 103). See also Clause b, Section 11, of the "Statute on the Supreme Court USSR" (p 115).

*405. Appeals of interlocutory orders of guberniya courts shall be filed in the appellate divisions of guberniya courts and shall be decided in executive session without the participation of the parties. Persons who have taken part in passing any order appealed against shall not participate in the appellate collegium which decides the appeal.**

**This section is no longer in force.

406. In localities declared under martial law, when a sentence to the supreme measure of punishment (death by shooting) has been passed, guberniya courts shall have the right, within 24 hours from the time the sentence has been passed -- if the convicted person files an appeal seeking quashing of the judgment -- to recommend that the appeal be denied consideration and that the sentence be executed immediately. The question of allowing or denying consideration of such an appeal shall be decided by the appropriate guberniya executive committee or its presidium within 24 hours from the time the recommendation of the guberniya court is received; in so doing, the guberniya executive committee shall not enter into a consideration of the validity or invalidity of the proof of the crime but shall decide the question exclusively on the basis of considerations of security, the prevalence of the given category of criminal acts in the given locality, and the necessity of taking extraordinary measures in order to suppress such acts.

The recommendation of a guberniya court not to consider an appeal seeking quashing of a judgment shall not relieve the court of the necessity of observing the provisions of Section 440 of the Criminal Procedural Code, and receipt of appropriate notification by the Supreme Court to suspend execution of a sentence and to submit a case to it shall be effective regardless of the decision of the executive committee on allowing or denying consideration of an appeal.

Guberniya executive committees shall be granted this right each time by special decree of the VTsIK specifying the precise period for which it is granted.

407. Sentences of tribunals operating in combat situations shall not be subject to appeals seeking quashing of judgments. A list of such tribunals shall be confirmed pursuant to a recommendation of the Military Collegium of the Supreme Court USSR agreed to by the Revolutionary Military Council USSR and the Plenary Session of the Supreme Court USSR (Section 16, Clause a, of the "Statute on the Supreme Court USSR"). Sentences passed by the indicated tribunals may be quashed or modified only by means of ex-officio action [of a higher court] in accordance with the provisions of Chapter XXX of the Criminal Procedural Code. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)**

**This section is no longer in effect; superseded by Section 30 of the "Statute on Military Tribunals and the Office of the Military Prosecutor." (USSR Laws 1926, Law No 413)

408. With regard to military tribunals, the right granted under Section 406 of the Criminal Procedural Code to guberniya executive committees shall likewise be granted to revolutionary military councils of fronts, armies, and military okrugs, and where such do not exist, to commanders of fronts, armies, and military okrugs. The indicated institutions and persons shall have this right without requirement of prior authorization by VTsIK. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)**

**No longer in effect; superseded by Section 31 of the "Statute on Military Tribunals and the Office of the Military Prosecutor."

XXIX

1. Proceedings in Guberniya Courts Acting as Courts of Appeal

409. Guberniya courts shall hear appeals or protests seeking modification or quashing of judgments in judicial session. The parties shall be summoned to the hearing of a case; failure to determine the whereabouts of a party or the failure to appear of a party who has received a timely summons shall not bar hearing of the case.

410. The hearing and adjudication of cases by guberniya courts shall be conducted by analogy with the provisions of Chapters XXII and XXIV of the Criminal Procedural Code. Hearings of cases shall begin with a report by one of the judges, after which the parties, if participating in the session, shall give explanations, first opportunity being accorded the party initiating the appeal or protest. After explanations by the parties, guberniya courts shall hear the prosecutor's conclusions and shall permit a final statement by the person committed for trial or by his defense counsel.**

**See Section 15 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" (p 103).

Note. Parties may file supplementary appeals and protests, with written explanations, to the prosecutor's conclusions on the case.

*411. Guberniya courts shall consider the question of overruling or modifying sentences only when there are appeals or protests seeking modification or quashing of judgments. When several persons have been committed for trial in a given case and if the sentence has been appealed or protested with respect to only certain ones of them,

guberniya courts shall hear the case only with regard to the latter persons. Exceptions to this rule shall be permitted only in cases covered by Section 422 of the Criminal Procedural Code.

*412. Aside from hearing the grounds set forth in appeals and protests seeking modification or quashing of judgments, guberniya courts shall in every case review all the proceedings in the case, and, if errors of law requiring such action are discovered, shall overrule the sentence and remand the case for retrial. In overruling sentences, the provisions of Sections 422, 424, and 373 of the Criminal Procedural Code shall be observed.

413. The following shall be grounds for overruling sentences under appellate procedure:

(1) Inadequate or incorrect conduct of the investigation;

(2) Substantial violations of the forms of judicial procedure;

(3) Violation or incorrect application of the law;

(4) Manifest injustice of the sentence.

414. Investigations conducted in such a fashion that circumstances, the clarification of which would necessarily have affected the determination of the sentence, were not sufficiently explored either in the pretrial investigation or in the hearing of evidence shall be deemed to have been inadequately or incorrectly conducted.

*415. Violations of sections of this Criminal Procedural Code which, by depriving parties of their rights secured by law or by infringing those rights during the trial or in other ways, prevented the court from considering all sides of the case and affected or could have affected the determination of a correct sentence shall be deemed substantial violations of the forms of judicial procedure.

In every case, a sentence shall be overruled:

(1) If the composition of the court was incorrect;

(2) If the case was not dismissed by the court when conditions requiring dismissal were present (Section 4 of the Criminal Procedural Code);

(3) If the case was tried in the absence of the person committed for trial when the law does not permit trial in absentia;

(4) If the case was tried in the absence of a defense counsel when participation of defense counsel is obligatory.

*416. The following shall constitute violations or incorrect applications of the law:

(1) Failure of the court to apply the law which should have been applied;

(2) Application of an inapplicable law;

(3) Incorrect interpretation of the law in contradiction to its letter or spirit;

(4) Application of legislation or regulations issued by other than the proper authorities, or by improper procedures, or in violation of decrees of the central government.

In all these cases, sentences shall be overruled only if the error committed by the court resulted in the imposition of a punishment differing from that which should have been imposed had the law been properly applied.

417. A sentence shall be considered manifestly unjust if the punishment imposed by the court, although within the lawful limits, is nevertheless sharply disproportionate to the crime.

418. If a people's court convicts a person committed for trial of an act which does not contain the criteria of a crime, or if the court fails to dismiss a case when grounds for dismissal exist (Section 4 of the Criminal Procedural Code), a guberniya court, in overruling the sentence of the people's court, shall dismiss the case and shall not remand it to the people's court for retrial.

419. If a people's court has violated the rules governing jurisdiction, in overruling the sentence of the people's court the guberniya court shall remand the case to the court having proper jurisdiction.

If, however, a court has pronounced an unquestionably correct sentence in a case not subject to its jurisdiction and has not exceeded its powers, the guberniya court shall have the right to decline to overrule the sentence and to limit itself to handing down an appropriate instruction concerning the erroneous action of the court in question.

*419-a. If a guberniya court concludes that a people's court has applied the law incorrectly to the facts of the case established in the sentence, or that the punishment imposed by the sentence is clearly disproportionate to the offense of the convicted person, it may modify the people's court sentence as necessary without remanding the case for retrial, provided, however, that the punishment prescribed by the guberniya court shall not exceed the punishment imposed by the people's court and that it shall not be less than is provided for by the applicable section of the Criminal Code. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

*420. In every other instance in which a guberniya court overrules a sentence of a people's court, it shall submit the case to another people's court for retrial or to the same people's court for retrial by different judges.

Guberniya courts may reduce or mitigate punishment by applying an applicable act of amnesty without submitting the case for retrial, provided the act of amnesty has not been applied or has been applied incorrectly.

*421. Rulings of guberniya courts involving the overruling of sentences shall cite the sections of the law deemed to have been violated and shall point out precisely what effect the violation had and why it is considered a substantial error. When a sentence is overruled on the grounds that it is manifestly unjust, the ruling shall indicate the grounds on which the court deems the sentence manifestly unjust.

In addition, rulings should indicate at what stage the retrial of the case in the people's court should begin.

422. If a sentence is overruled on the basis of violations cited in Subsection 1, Section 415 of the Criminal Procedural Code, or if it is overruled on the grounds cited in Section 317 and 418 of the Criminal Procedural Code, if the grounds for reversal apply to all the persons convicted the guberniya court shall overrule the sentence in full with regard to all the persons committed for trial who were convicted, including those in respect of whom the sentence has neither been appealed nor protested.

423. When a guberniya court remands a case for retrial, the instructions given by the guberniya court shall be binding regarding the case in question on the people's court which conducts the retrial.

The people's court shall recommence proceedings on the case at whatever stage of the trial is specified in the guberniya court's decision overruling the original sentence.

*424. If an original sentence is reversed on the grounds relied upon in the appeal of the convicted person, a more severe punishment than that imposed by the court at the first trial shall not be imposed upon retrial.

425. Sentences rendered by people's courts upon retrial of a case may be appealed on general grounds.

426. Appellate rulings by guberniya courts shall be final and may be protested to the Supreme Court only under ex-officio review procedure through plenary sessions of guberniya courts. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)**

**Plenary sessions of kray, oblast, and supreme courts of union and autonomous republics were abolished by the "Law on the Judicial System of the USSR and of Union and Autonomous Republics." At the present time, the procedure for protesting and overruling sentences of people's courts and rulings of kray and oblast courts which have become final and executive is provided for by the ukases of the Presidium, Supreme Soviet USSR of 14 August 1954 "On the Organization of Presidiums in Supreme Courts of Union and Autonomous Republics, in Kray and Oblast Courts, and in Courts of Autonomous Oblasts" and of 25 April 1955 "On Procedure for the Review of Cases by Court Presidiums" (pp 118-121).

*2. Guberniya Court Ex Officio Review Procedure**

**See ukases of the Presidium, Supreme Soviet USSR of 14 August 1954 "On the Organization of Presidiums in Supreme Courts of Union and Autonomous Republics, in Kray and Oblast Courts, and in Courts of Autonomous Oblasts" and of 25 April 1955 "On Procedure for the Review of Cases by Presidiums of Courts," (pp 118-121).

427. The chairman of a guberniya court and the guberniya prosecutor shall have the right to demand from courts in the given guberniya for ex-officio review the proceedings on any case at any stage of the trial. Precinct (uyezd and rayon) prosecutors shall have this right only in regard to cases in people's courts in the precinct of their jurisdiction.

Upon receiving a demand to submit a case, a court shall send the case to the person demanding it and suspend proceedings on the case.

If a judicial session has begun hearing the given case, it shall be forwarded only after sentence has been passed. (RSFSR Laws 1923, Law No 480, dated 10 July 1923)

Note 1. With regard to cases being proceeded upon by military tribunals, the right to demand cases for ex officio review shall be enjoyed by chairmen of okrug tribunals and military okrug prosecutors, and in guberniyas where such are not permanently stationed, by guberniya prosecutors. (RSFSR Laws 1923, Law No 480, dated 10 July 1923; 1924, Law No 784, dated 16 October 1924)

Note 2. The right to demand cases which are in the investigation stage shall be enojoyed solely by prosecutors. (RSFSR Laws 1923, Law No. 480, dated 10 July 1923.)

428. Any person who has demanded and received a case and who has not found substantial violations in the proceedings shall immediately return the case to the court, and ex officio review proceedings shall cease.

If any substantial violation is noted, the case shall be submitted -- by chairmen of guberniya courts and guberniya prosecutors directly, and by precinct assistant prosecutors through the guberniya prosecutor -- to the appellate division of the guberniya court, if it is a people's court case, and to a plenary session of the guberniya court if it is a guberniya court case.

The appellate division of the guberniya court or the plenary session of the guberniya court, after hearing the prosecutor's opinion, shall rule on the further treatment of the case, and shall give the court the necessary instructions concerning the case. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

Note. Tribunal cases that are demanded and received for ex officio review shall be sent with the prosecutor's conclusions to the Criminal Appeals Collegium of the Supreme Court if it is established that substantial violations have occurred in the proceedings. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

429. If a case is demanded after a sentence becomes final and executive and substantial violations are noted in the proceedings, the case shall be submitted -- by the chairman of the guberniya court and the guberniya prosecutor directly, and by precinct assistant prosecutors through the guberniya prosecutor -- as follows:

a. Any case decided by a people's court and not appealed for quashing shall be submitted to the appellate division of a guberniya court which shall decide the question of overruling the sentence under ex officio review procedure;

b. If a guberniya court has already delivered an appellate ruling on a case, or if the appellate division thereof does not agree with the protest of the guberniya prosecutor, the question of overruling the sentence and the ruling of the appellate division of the guberniya court shall be taken up by the guberniya prosecutor before a plenary session of the guberniya court, which, if it agrees with the guberniya prosecutor, shall render a final decision on the case, and a copy of the decision of the plenary session of the guberniya court shall be sent to the Supreme Court. If the plenary session and the guberniya prosecutor disagree, the entire case shall be subject to submission for final decision to the Criminal Appeals Collegium of the Supreme Court with both the prosecutor's protest and the decision of the plenary session appended;

c. Cases decided by the criminal divisions of guberniya courts shall be submitted for ex officio review to the Criminal Appeals Collegium of the Supreme Court through the chairman of the guberniya court; the latter may submit the case for preliminary consideration by a plenary session, the opinion of which shall be appended to the case;

d. Cases decided by military tribunals shall be submitted by the persons who demanded and received them (Note 1 to Section 427), through the chairman of the appropriate tribunal, to the Criminal Appeals Collegium of the Supreme Court. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

430. There shall be no time limit for demanding cases under the procedure established in Sections 426 and 427 above.

3. Procedure on Protests and Appeals of Interlocutory Orders

431. Appeals of interlocutory orders shall be heard by guberniya courts in judicial session without summoning the parties, but if the latter appear at the session they shall be permitted to offer explanations. Parties shall be notified of the date set for considering appeals of interlocutory orders by displaying on the court walls for a week the calendar for appeals of interlocutory orders.

432. Guberniya courts shall hear cases and rule in accordance with the provisions of Chapters XXII and XXIV of the Criminal Procedural Code. Hearings of cases shall begin with a report by one of the judges, after which the parties, if they are present, shall offer their explanations, first opportunity being given to the party who filed the appeal. Then the court shall rule on whether to deny the appeal or to overrule the interlocutory order of the people's court.

433. Guberniya courts shall consider appeals against interlocutory orders only with regard to those persons by whom the appeal was filed.

Part 5. SUPREME COURT PROCEDURE

XXX**

**See footnote to Part Four (p 74) and the "Law on the Judicial System of the USSR and of Union and Autonomous Republics."

1. Appellate Procedure

434. Protests and appeals seeking modification or quashing of judgments of guberniya courts and tribunals which are submitted to the Supreme Court shall be heard by the Appellate Collegium of the Supreme Court** in the order in which they are received. Cases involving sentences imposing the supreme penalty (death by shooting)*** shall be separated from the others and heard in such a manner that not more than one week shall elapse from the time a case is received until the Appellate Collegium rules on it.

**See Sections 48, 50, 51, and 59 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" and the "Statute on the Supreme Court USSR" of 12 February 1957 (pp 110-112).

***See the ukases of the Presidium, Supreme Soviet USSR, of 26 May 1947 "On Abolishing the Death Penalty (Vedomosti Verkhovnogo Soveta SSSR 1947, No 17), of 12 January 1950 "On Applying the Death Penalty to Traitors, Spies, Subversives, and Saboteurs" (Vedomosti Verkhovnogo Soveta SSSR 1950, No 3), and of 30 April 1954 "On Increasing the Criminal Penalty for Murder" (Vedomosti Verkhovnogo Soveta SSSR 1954, Law No 221).

The prosecutor attached to the Appellate Collegium of the Supreme Court shall supervise the handling and preparation of cases for hearing.**

**Paragraph 2 of Section 434 is no longer in force.

435. Cases shall be heard in open judicial session by the Appelate Collegium and shall begin with a report on the appeal or protest by one of the members of the collegium, after which the court shall hear the prosecutor's opinion and the statements of the parties, if such have been permitted to participate in the case. If the person committed for trial is present and if he so requests, he shall be permitted to offer a statement.

Parties shall not be summoned for judicial sessions; if the parties do appear they shall be permitted to participate in the judicial session. A list of cases scheduled for hearing shall be made public 24 hours before the session.

436. In hearing appeals and protests seeking modification or quashing of judgements, the Appellate Collegium shall be guided by the provisions of Sections 411, 412, and 421 of the Criminal Procedural Code. The circumstances listed in Sections 413-417 of the Criminal Procedural Code shall be grounds for overruling sentences by appellate procedure.**

**See Section 15 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" (p 103).

*437. If the Appellate Collegium considers the punishment imposed clearly disproportionate to the offense of the convicted person, it shall either overrule the sentence and remand the case for retrial in another guberniya court or tribunal** or in the same guberniya court or tribunal by another panel of judges, or it shall modify the sentence and mitigate the punishment at its discretion within the limits established by the applicable sections of the Criminal Code. If the Appellate Collegium considers it necessary to mitigate the punishment to a degree greater than is provided for by the applicable sections of the Criminal Code, it shall submit a recommendation to that effect to the Presidium of VTsIK.***

**The reference to military tribunals is no longer in force because protests and appeals of the sentences of military tribunals are now subject to consideration in accordance with Section 59 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" (p 112).

***The right of pardon resides in the Presidium, Supreme Soviet USSR (Clause k, Section 49 of the USSR Constitution), and in regard to persons convicted by judicial organs of the RSFSR, in the Presidium Supreme Soviet RSFSR (Clause g, Section 49 of the RSFSR Constitution).

In all other cases, the Appellate Collegium shall overrule sentences in accordance with the provisions of Sections 418 and 419 of the Criminal Procedural Code or shall remand the case for retrial in another guberniya court or tribunal or to the same guberniya court or tribunal for retrial by a different panel of judges.

438. Rulings of the Appellate Collegium may be protested by the chairman of the Supreme Court and the Prosecutor of the Republic to the Plenary Session of the Supreme Court. In like manner, a judge presiding at a session of the Appellate Collegium which passes a ruling to which he dissents and the prosecutor who delivered the opinion in the case may appeal the ruling, within one day from the day on which the ruling is passed, to the Plenary Session of the Supreme Court, submitting with it his dissenting opinion in written form. When a ruling of the Appellate Collegium is protested, its execution shall be suspended.** (RSFSR Laws 1923, Law No 480, dated 10 July 1923)

**See footnote to Section 426.

Note. Any member of the Appellate Collegium who participates in a ruling but who disagrees with it may set forth in writing his dissenting opinion (Section 325 of the Criminal Procedural Code), which within 24 hours from the moment the ruling is passed shall be reported by the dissenting member to the chairman of the Supreme Court; the latter may reject the dissent or may protest the ruling of the Appellate Collegium to the Plenary Session under the procedure set forth in this section. (RSFSR Laws 1923, Law No 480, dated 10 July 1923)

439. In ruling on an appeal or protest, whether or not the sentence of the guberniya court or tribunal is left in force, the Appellate Collegium may include in its ruling instructions regarding violations committed by the court or tribunal and such instructions shall be binding on the given guberniya court or tribunal.

2. Ex Officio Review Procedure**

**See Section 16 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics;" and the ukases of the Presidium, Supreme Soviet USSR, of 14 August 1954 "On Forming Presidiums in Supreme Courts of Union and Autonomous Republics, in Kray and Oblast Courts, and in Courts of Autonomous Oblasts" and of 25 April 1955 "On Procedure for the Review of Cases by Presidiums of Courts" (pp 103, 118-121) and the "Statute on the Supreme Court USSR" (pp 113-117).

440. The People's Commissar of Justice, the Prosecutor of the Republic, and the chairman of the Supreme Court shall have the right to demand a case for review (kontrol') at any stage in the proceedings and from any judicial organ of the RSFSR.

Kray and oblast prosecutors, prosecutors of autonomous republics and autonomous oblasts, and chairmen of kray (oblast) courts, of the chiefs courts** of autonomous republics, and of oblast courts in autonomous oblasts shall have the right to demand cases for review from the judicial organs of their kray (oblast) or republic. Rayon prosecutors shall have the right to demand cases from the judicial organs of their rayons.

**Supreme courts.

Organs which demand cases for review, excluding rayon prosecutors, may suspend execution of sentences.**

**See Section 27 of the "Statute on Supervision by Prosecutors," confirmed by ukase of the Presidium, Supreme Soviet USSR of 25 May 1955 (p 126).

If execution of a sentence is suspended, the case must be returned or transferred for review within 10 days from the time it is received. (RSFSR Laws 1932, Law No 203, dated 10 May 1932)

441. Cases received from people's courts, guberniya courts, or tribunals shall go to the prosecutor attached to the Supreme Court, and if he does not find violations in the proceedings, he shall so report to the chairman of the Supreme Court. If the latter agrees with the prosecutor's opinion, the ex officio review proceedings on the case shall be terminated. If the chairman does not agree with the prosecutor or if the prosecutor observes substantial violations in a case, the prosecutor shall submit the case, with his opinion, to the Appellate Collegium, which shall pass a resolution on forwarding the case, together with appropriate instructions, to a people's court, guberniya court, or tribunal; if sentence has already been pronounced on the case, the Appellate Collegium shall resolve either to overrule the sentence and remand the case for retrial in a different court, or in the same people's court, guberniya court, or tribunal with a different panel of judges, or to modify the sentence appropriately. This right resides exclusively in the Appellate Collegium or in the Plenary Session of the Supreme Court also with respect to guberniya courts and military tribunals.** (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

**Section 441 is no longer in force.

442. In pronouncing a sentence condemning a person to death by shooting,** regardless of whether or not an appeal protest seeking modification or quashing of the judgment has been filed, guberniya courts and tribunals, immediately upon pronouncing the sentence, shall notify the Supreme Court thereof by telegraph indicating the month, date, hour, and minute on which the sentence was pronounced, giving a summary of the charges, citing the section of the Criminal Code under which the defendant was convicted, and the family name, given name, class origin, social position, and age of the convicted person. The sentence may be executed only after 72 hours have elapsed from the moment the Supreme Court is notified without receiving from the Supreme Court a stay of execution and demand for the case under ex officio review procedure and without receiving a stay of execution from the VTsIK or its Presidium.

**See the ukases of the Presidium, Supreme Soviet USSR of 26 May 1947 "On Abolishing the Death Penalty" (Vedomosti Verkhovnogo Soveta SSSR 1947, No 17), of 12 January 1950 "On Applying the Death Penalty to Traitors, Spies, Subversives, and Saboteurs" (Vedomosti Verkhovnogo Soveta SSSR 1950, No 3), and of 30 April 1954 "On Increasing the Criminal Penalty for Murder" (Vedomosti Verkhovnogo Soveta SSSR 1954, Law No 221).

If an appeal seeking quashing of the judgment is filed, the sentence shall not in any case be executed until the appeal has been reviewed by the Appellate Collegium.

443. Cases which are received by the Appellate Collegium of the Supreme Court from plenary sessions of guberniya courts under ex officio review procedure shall always be heard by the entire Appellate Collegium regardless of the prosecutor's opinion.

444. In considering cases under ex officio review procedure, the Appellate Collegium shall not be bound by the prosecutor's opinion and may rule either to overrule the sentence and remand the case for retrial or to strike all the proceedings on the case and order that it be proceeded upon de novo from the pretrial investigation stage.

3. Reopening of Cases

445. Cases in which sentences by guberniya courts or tribunals** have become final and executive shall be reopened in accord with the provisions of Sections 373-376 of the Criminal Procedural Code. Motions for the reopening of cases shall be submitted by interested persons to the prosecutor attached to the guberniya court or tribunal which pronounces the sentence.**

**The reference to tribunals became void with the publication of the "Statute on Military Tribunals and the Office of the Military Prosecutor."

***The end of the section reading "attached to the guberniya court or tribunal which pronounces the sentence" is no longer in force.

446. If prosecutors, upon receiving such motion or on their own initiative, consider it necessary to raise the question of reopening a case, they shall conduct the necessary investigation either personally or through police inquiry or pretrial investigation agencies, after which the entire corpus of the material collected, together with their opinions, shall be submitted directly to the Appellate Collegium of the Supreme Court.

447. Questions of reopening cases shall be decided by the Supreme Court under judicial ex officio review procedure through the Appellate Collegium.

XXXI. PROCEDURE IN THE SUPREME COURT AS A COURT OF ORIGINAL JURISDICTION**

**See footnote to Part Four (p 74), the "Law on the Judicial System of the USSR and of Union and Autonomous Republics," and the "Statute on the Supreme Court USSR" (pp 101-117).

448. Procedure in the Judicial Collegium for Criminal Cases of the Supreme Court shall be governed by the procedure established for the guberniya courts. Sentences by the Judicial Collegium for Criminal Cases of the Supreme Court shall not be subject to appeal by appellate procedure but may be overruled or modified by the Plenary Session of the Supreme Court under ex officio review procedure. The right to appeal sentences of the Judicial Collegium for Criminal Cases to the Plenary Session of the Supreme Court, shall be granted to the Prosecutor of the Republic, the Prosecutor of the Supreme Court, and the Prosecutor attached to

the Judicial Collegium for Criminal Cases and his assistants (to the latter if they participate directly in the judicial session), but such appeals may be taken exclusively on grounds involving incorrect application of the law in determining sentences. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)**

**See the ukases of the Presidium, Supreme Soviet USSR, of 14 August 1954 "On Forming Presidiums in Supreme Courts of Union and Autonomous Republics, in Kray and Oblast Courts, and in Courts of Autonomous Oblasts" and of 25 April 1955 "On Procedure for Consideration of Cases by Presidiums of Courts," the "Statute on Supervision by Prosecutors," and the "Statute on the Supreme Court USSR (pp 113-121, 123-128).

449. The Judicial Collegium of the Supreme Court shall have original jurisdiction over the following:

(1) Cases of exceptional importance, submitted for trial by the Judicial Collegium by decree of the Presidium of VTsIK or the Plenary Session of the Supreme Court or proposed for trial in the Judicial Collegium by the Prosecutor or the Republic or the chief of the State Political Administration of the People's Commissariat of Internal Affairs. Cases proposed for trial in the Judicial Collegium by the Prosecutor of the Republic or the chief of the State Political Administration may be accepted for trial by the Judicial Collegium or transferred by it for trial in any guberniya court at its discretion;

(2) Cases involving accusations of breach of official duty by members of VTsIK, people's commissars, members of the collegiums of people's commissariats, members of the presidium of the Supreme Council of National Economy, members of collegiums of the Supreme Court, assistants to the Prosecutor of the Republic, and members of the collegium of the State Political Administration of the People's Commissariat of Internal Affairs;

(3) Cases involving accusations of breach of official duty by guberniya prosecutors and their assistants, members of the presidiums of guberniya executive committees, directors of divisions, and chairmen and deputy chairmen of guberniya courts, provided that any of the cases enumerated in this subsection may either be accepted for trial by the Judicial Collegium or transferred by it to any guberniya court in the light of the importance of the case.** (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

**See Sections 48 and 52 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics."

450. The Plenary Session of the Supreme Court may, in individual cases, appoint at its discretion any of the members of the Supreme Court to preside over the Judicial Collegium for Criminal Cases for the trial of cases submitted to the latter. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

451. Rescinded. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

452. Rescinded. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

453. Rescinded. (RSFSR Laws 1924, Law No 784, dated 16 October 1924)

Part 6.

XXXII. EXECUTION OF SENTENCES

*454. Judicial sentences shall be executed immediately after they become final and executive (Section 342 of the Code of Criminal Procedure). Sentences acquitting the defendant or relieving him of punishment shall be executed by the chairman immediately after they have been pronounced (Section 340 of the Code of Criminal Procedure).

Note. Sentences depriving the defendant of the Order of the Red Banner shall become final and executive and shall be executed only upon the confirmation of the sentence on that point by the Presidium of VTsIK.**

**Questions of awarding orders have been placed under the jurisdiction of the Presidium, Supreme Soviet USSR (Clause i Section 49 of the USSR Constitution).

455. Sentences shall be put into execution by the court which renders them, for which purpose the court shall transmit a copy of the sentence to a place of confinement, to the militia, or to other agencies responsible for the actual execution of the sentence.

Prosecutor's offices shall supervise the correct execution of sentences.

*456. Postponement of the execution of sentences shall be permitted only in the following cases:

(1) When the illness of a convicted person prevents his serving his sentence, execution of the sentence shall be deferred until he recovers;

(2) When pregnancy of the convicted person prevents her serving her sentence, execution of the sentence shall be postponed until 2 months after she gives birth;

(3) When serving a sentence immediately can result in particularly onerous consequences for the convicted person or his family in view of special circumstances or special conditions in his situation, such as fire or other natural disasters, serious illness or death of the only member of the family capable of working, etc.

*457. If a person serving a sentence of confinement has been placed in a curative institution because of mental or other illness, the time spent by the convicted person in the curative institution shall be considered a part of the period of confinement. Persons under confinement who contract mental illnesses or serious incurable illnesses, upon an opinion to that effect by a medical commission, may be given consideration by the court which pronounced the sentence, and a ruling may be issued, by analogy with Section 196 of the Criminal Procedural Code,** that they be transferred to special mental or other hospitals or released.

**The words "By analogy with Section 196 of the Criminal Procedural Code" became void when Chapter XVI was rescinded.

458. Rescinded.

*458-a. If an amnesty act which relieves persons fully or partially of the principal punishment does not mention the revocation of additional punishments in the form of deprivation of rights, dismissal from a position, prohibition to engage in some activity or trade, or expulsion from the RSFSR or from particular localities, the courts must decide whether such punishment shall be revoked or mitigated. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

459. Fines and court costs shall be recovered from the property of convicted persons by bailiffs, and where there are no bailiffs, by the village soviet. (RSFSR Laws 1932, Law No 21, dated 1 January 1932)

460. Payment of fines may be deferred for, or paid in installments over, a period not exceeding 6 months when immediate payment is beyond the means of the convicted person.

*461. The court pronouncing the given sentence shall decide the questions of postponing execution of sentences, of deferring payment of fines, of replacing fines with forced labor, and any doubtful points or disputes which arise in connection with execution of sentences. If a sentence is executed outside the area of jurisdiction of the court which passed it, all questions covered in this section shall be decided as follows: for sentences rendered by guberniya courts, by the guberniya court in whose area of jurisdiction the sentence is implemented; for sentences rendered by tribunals, by the tribunal in whose area of jurisdiction the sentence is implemented. Courts deciding these questions may demand the original case.

Note. The procedure for deciding questions of postponing execution of sentences, of deferring payment of fines, and of replacing fines with forced labor exclusively through the courts shall not abridge the rights of the supreme legislative authority the VTsIK and its Presidium) to decide at its discretion all the enumerated questions in any given case under the procedure of general and personal acts of amnesty.**

**The right of pardon resides in the Presidium, Supreme Soviet USSR (Clause k, Section 49 of the USSR Constitution), and regarding persons convicted by judicial organs of the USSR, in the Presidium, Supreme Soviet RSFSR (Clause g, Section 33 of the RSFSR Constitution).

*462. The questions covered in the preceding section shall be decided by courts in judicial session, and the prosecutor and the convicted person shall be notified. Plaintiffs seeking damages in criminal proceedings shall be summoned when the court is to consider questions relative to execution of the party of a sentence involving a civil suit. Failure of persons who are summoned to appear shall not affect consideration of the case.

The hearings of the case shall begin with a report delivered by one of the judges, after which the court shall hear the prosecutor's opinion and the explanations of the convicted person and his counsel and of the plaintiff seeking damages in criminal proceedings, if they participate in the session. After hearing the prosecutor's opinion and the explanations of the parties, the court shall make its ruling.

463. Rescinded.

464. Rescinded.

465. When it is necessary to pronounce a cumulative sentence on a person who has received a number of sentences, the cumulative sentence shall by pronounced by the court which has pronounced the most recent sentence, provided, however, that if a preceding sentence which has become final and executive imposed more severe punishment, the most recent sentence shall be considered voided by the preceding sentence. (RSFSR Laws 1926, Law No 623, dated 22 November 1926)

Part 7.

XXXIII. INVESTIGATION AND TRIAL OF CASES INVOLVING TERRORIST ORGANIZATIONS AND ACTS OF TERRORISM AGAINST SOVIET OFFICIALS

466-470. Rescinded (24 May 1956).

XXXIV. TRIAL OF CASES OF COUNTER-REVOLUTIONARY WRECKING AND SABOTAGE

471-473. Rescinded (24 May 1956).

APPENDIX A. LEGISLATIVE ACTS

Law on the Judicial System of the USSR and of Union and Autonomous Republics

Adopted by the Supreme Soviet USSR on 16 August 1938 (Vedomosti Verkhovnogo Soveta SSR 1938, No 11)

I. General Provisions

1. In accordance with Section 102 of the USSR Constitution, justice in the USSR shall be administered by the Supreme Court USSR, supreme courts of union republics, kray and oblast courts, courts of autonomous republics and autonomous oblasts, okrug courts, special courts of the USSR established by decree of the Supreme Soviet USSR, and people's courts.

2. The administration of justice in the USSR shall have the purpose of protecting the following against all infringements:

a. The public and state system of the USSR established by the Constitution of the USSR and the constitutions of the union and autonomous republics, the socialist economic system, and socialist property;

b. Political, labor, housing, and other personal and property rights and interests of citizens of the USSR guaranteed by the Constitution of the USSR and the constitutions of the union and autonomous republics;

c. The rights and interests of state institutions, enterprises, collective farms, cooperatives, and other public organizations which are protected by law.

The administration of justice in the USSR shall have the purpose of ensuring precise and undeviating observance of Soviet laws by all institutions, organizations, officials, and citizens of the USSR.

3. Soviet courts, in imposing measures of criminal punishment, shall not only punish offenders but shall also have the goal of reforming and re-educating offenders.

By all their activities, courts shall train citizens of the USSR in the spirit of devotion to the Motherland and to the cause of socialism, in the spirit of precise and undeviating observance of Soviet laws, of a solicitous attitude toward their state and public duties, and of respect for the rules of socialist society.

4. The tasks of courts in the USSR cited in Section 2 of this law shall be implemented by the following means:

a. Trial of criminal cases in judicial sessions and application of measures of punishment established by law to traitors, wreckers, persons who plunder socialist property, and other enemies of the people, and to looters, thieves, hooligans and other criminals;

b. Trial and decision in judicial sessions of cases relative to disputes involving the rights and interests of citizens, state institutions, enterprises, kolkhozes, and other public organizations.

5. The following principles shall govern the administration of justice in the USSR:

a. A unified and equal system of justice for all citizens regardless of their social, property, or service status, and of their national and racial affiliations;

b. Unified criminal, civil, and procedural legislation for the USSR, binding on all courts.

6. Judges shall be independent and subject only to the law (Section 112 of the USSR Constitution).

7. In accord with Section 110 of the USSR Constitution, judicial proceedings in the USSR shall be conducted in the language of the union or autonomous republic or of the autonomous oblast, provided that any person who does not know such languages shall be fully acquainted with the materials of the case through an interpreter and shall have the right to speak in court in his native language.

8. In accordance with Section 111 of the USSR Constitution, the trial of cases in all courts of the USSR shall be public, insofar as the law does not provide exceptions, and accused persons shall be guaranteed the right of defense.

9. In accordance with Section 103 of the USSR Constitution, trials of cases in all courts of the USSR shall be conducted with the participation of people's assessors, with the exception of cases especially provided by the law.

10. In accordance with Sections 105, 106, 107, 108, and 109 of the USSR Constitution, courts in the USSR shall be formed on an elective basis in accordance with the principles established by the present law.

11. Any citizen of the USSR who enjoys electoral rights and has attained the age of 23 years by the day of his election may be elected a judge or people's assessor. Persons with criminal records may not be elected to the position of judge or people's assessor. (Text according to the ukase of the Supreme Soviet USSR of 16 September 1948; Vedomosti Verkhovnogo Soveta SSSR 1948, No 38)

12. People's assessors shall be called on to perform their duties in court by turns according to the rolls for no more than 10 days a year, except when the participation of people's assessors in a trial requires an extension of this period.

While performing his duties in court, a people's assessor shall enjoy all the rights of a judge.

13. People's assessors who are workers or employees shall receive their wages for the entire period of their service in court.

In all other cases, payment to people's assessors of expenses connected with their services in court shall be made in accordance with the procedures established by the legislation of union republics.

14. Trials in all courts shall be conducted by a judge and two people's assessors, except in those cases specially provided for by law, when the trial shall be conducted by three members of the court.

15. Sentences, decisions, and rulings of all courts except the Supreme Court USSR and the supreme courts of the union republics may, under the procedures established by law, be appealed by convicted persons, their defense counsels, plaintiffs, defendants in civil cases, and representatives of their interests, or may be protested by prosecutors, to a higher court.

In reviewing appeals and protests, the higher court shall ascertain, on the basis of the materials on record in the case and those submitted by the parties, whether the sentence or decision rendered by the lower court [in a criminal or civil case] is legally correct and well founded.

16. Judicial sentences, decisions, and rulings which have become final and executive may be protested only by the Prosecutor of the USSR, the prosecutors of union republics, the chairman of the Supreme Court USSR, and the chairmen of the supreme courts of the union republics, in accordance with Sections 51, 64, and 74 of this law.**

**See the ukases of the Presidium, Supreme Soviet USSR, of 14 August 1954 "On Forming Presidiums in Supreme Soviets of Union and Autonomous Republics, in Kray and Oblast Courts, and in Courts of Autonomous Oblasts" and of 25 April 1955 "On Procedure for the Review of Cases by Presidiums of Courts," the "Statute on Supervision by Prosecutors," and the "Statute on the Supreme Court USSR." Sections 64 and 74 were rescinded by the law of 12 February 1957 (Vedomosti Verkhovnogo Soveta SSSR 1957, Law No 57).

17. Judges shall be relieved of office, and people's assessors of their duties, only upon recall by the electorate or upon a sentence rendered by a court against them.

18. Criminal prosecution shall be instituted against judges, and in consequence therof they shall be removed from office and committed for trial:

a. Upon a resolution of the prosecutor of a union republic sanctioned by the presidium of the supreme soviet of the union republic, in the case of a people's judge, a member of a kray, oblast, okrug, or autonomous oblast court, or a member of the supreme court of a union or autonomous republic;

b. Upon a resolution of the Prosecutor of the USSR sanctioned by the Presidium, Supreme Soviet USSR, in the case of a member of the Supreme Court USSR or of a special court of the USSR.**

**See Section 17 of the "Statute on the Supreme Court USSR" (p 117).

19. In the event of the temporary absence of a people's judge (as a result of illness, vacation, etc.), the rayon soviet shall appoint a people's assessor to perform the duties of the judge during his absence.

20. If a people's judge vacates his office before his term expires, the election of a new people's judge shall be held no later than 2 months from the date on which the office becomes vacant.

Elections of people's judges shall be organized by presidiums of supreme soviets of union republics which are not divided into oblasts, by executive committees of kray and oblast soviets, and by presidiums of supreme soviets of autonomous republics, upon the recommendation of ministries of justice of union republics which are not divided into oblasts, of kray or oblast administrations of ministries of justice of union republics, or of ministries of justice of autonomous republics.**

**Administrations of union-republic ministries of justice attached to kray and oblast soviets were abolished by the ukase of the Presidium, Supreme Soviet USSR, of 4 August 1956 (Vedomosti Verkhovnogo Soveta USSR 1956, Law No 356); ministries of justice of autonomous republics in the RSFSR were abolished by ukases of the Presidium, Supreme Soviet RSFSR, of 11, 18, and 23 April 1957.

If members of okrug, kray, or oblast courts, or of supreme courts of union or autonomous republics, or of special courts and the Supreme Court USSR vacate their offices, elections of members of courts shall be conducted at the next session of oblast, kray, or okrug soviets, of supreme soviets of union or autonomous republics, or of the Supreme Soviet USSR. (Text according to the ukase of the Presidium, Supreme Soviet USSR, of 30 July 1949)

II. People's Courts

21. People's courts shall try:

a. Criminal cases involving crimes against the life, health, liberty, and dignity of citizens, viz., murder, infliction of bodily injury, performance of illegal abortions, unlawful deprivation of freedom, rape, malicious failure to pay alimony, insult, hooliganism, and slander;

Involving crimes against property, viz., robbery, looting, larceny, fraud, and extortion;

Involving breach of official duty by officials, viz., abuse of authority, acting in excess of authority, nonfeasance, embezzlement, mismanagement, forgery, giving customers short weight or short measure, and overcharging;

Involving crimes against public administration, viz., violations of the electoral laws, malicious failure to pay taxes and assessments established by law, refusal to perform deliveries and duties to the state, evasion of call-up and of performance of military service, and violation of lawful regulations of public authorities;

b. Civil cases involving property claims, claims connected with the violation of labor laws, claims for payment of alimony, claims involving succession rights, and other criminal and civil cases placed by law within the jurisdiction of the court.

22. On the basis of Section 109 of the USSR Constitution, people's courts shall be elected for a term of 3 years by the citizens of rayons on the basis of universal, direct, and equal suffrage by secret ballot.

23. People's judges and people's assessors shall be elected by the citizens of rayons according to electoral okrugs; the electoral okrug for election of people's judges and people's assessors shall include all persons living within the area of jurisdiction of the given people's court.

24. The right to nominate candidates for people's judge or people's assessor shall be guaranteed to the public organizations and social organizations of the working people: Communist Party organizations, trade unions, cooperatives, youth organizations, and cultural societies; general assemblies of workers and employees of enterprises, of military personnel in military units, of peasants in kolkhozes, and of sovkhoz workers and employees in sovkhozes.

25. The procedure for registering candidates and for publishing lists of candidates for people's judge and people's assessor, and the dates and procedure for elections shall be established by statutes on the election of judges and people's assessors confirmed by the supreme soviets of union republics.

26. The number of people's courts for each rayon shall be established by the sovnarkoms of union republics upon the recommendation of the people's commissars of justice of union republics. In autonomous republics the number of people's courts for each rayon shall be established by the sovnarkoms of autonomous republics upon the recommendation of people's commissars of justice of autonomous republics.**

**See footnotes to Sections 23, 18, and 20.

27. Before the trial of a case in judicial session people's courts shall:

a. Approve the bill of charges submitted by the prosecutor. If it disagrees with a bill of charges, a people's court may return the case to the prosecutor for supplementary investigation or dismiss proceedings on the case if sufficient grounds for dismissal exist;

b. Decide whether to take the defendant into custody or to release him from custody;

c. Rule on whether or not participation in the trial of defense counsel and a prosecutor is obligatory.

28. People's judges shall:

a. Upon receiving complaints or statements, resolve to institute criminal proceedings or refuse to do so;

b. When necessary, submit statements and complaints to investigative agencies for investigation;

c. Fix the date for the hearing of the case;

d. Issue orders summoning to court accused persons, witnesses, and expert witnesses and notify plaintiffs and defendants in civil cases of the date set for the hearing;

e. Preside at people's court sessions.

29. People's judges shall be responsible to the voters for their work and for the work of the people's courts.

III. Kray, Oblast, and Okrug Courts and Courts of Autonomous Oblasts

30. In accordance with Section 108 of the USSR Constitution, kray, oblast, okrug, and autonomous oblast courts shall be elected by kray, oblast, okrug, and autonomous oblast soviets for a term of 5 years.

31. Kray, oblast, okrug, and autonomous oblast courts shall consist of a chairman, a deputy chairman, members of the court, and people's assessors called to participate in the trial of judicial cases.

32. Kray, oblast, okrug, and autonomous oblast courts shall try criminal cases placed by law under their jurisdiction involving counter-revolutionary crimes, especially dangerous crimes against public administration, the plundering of socialist property, particularly important breaches of official duty and economic crimes, and civil cases placed by law under their jurisdiction involving disputes between state and public institutions, enterprises, and organizations.

Kray, oblast, okrug, and autonomous oblast courts shall, in addition, hear appeals from and protests against sentences, decisions, and rulings of people's courts.**

**The ukase of the Presidium, Supreme Soviet USSR, of 4 August 1956 "On Extending the Rights of Kray and Oblast Courts and on Abolishing Administrations of Union-Republic

Ministries of Justice Attached to Kray and Oblast Soviets" (Vedomosti Verkhovnogo Soveta SSSR 1956, Law No 356) accorded kray and oblast courts the right to inspect people's courts and to supervise all of their activities. They were also made responsible for directing the state notarial offices.

33. The following shall operate in kray, oblast, okrug, and autonomous oblast courts:**

**By the ukase of the Presidium, Supreme Soviet USSR, of 14 August 1954, presidiums were formed in supreme courts of union and autonomous republics and in kray, oblast, and autonomous oblast courts (pp 118-119).

a. A judicial collegium for criminal cases to hear criminal cases under the jurisdiction of kray, oblast, okrug, and autonomous oblast courts and to hear appeals from and protests against sentences and rulings of people's courts;

b. A judicial collegium for civil cases to hear civil cases under the jurisdiction of kray, oblast, okrug, and autonomous oblast courts and to hear appeals from and protests against decisions and rulings of people's courts.

34. Judicial collegiums of kray, oblast, okrug, and autonomous oblast courts shall hear criminal and civil cases sitting as a body of three: a presiding judge -- the chairman or a member of the court -- and two people's assessors.

35. Judicial collegiums of kray, oblast, okrug, and autonomous oblast courts shall hear appeals from and protests against sentences, decisions, and rulings of people's courts sitting as a body of three members of the court in question.

36. In oblasts which are subdivisions of a kray, okrug and oblast courts shall operate with the same composition as the kray court.

37. Chairmen of kray, oblast, okrug, and autonomous oblast courts shall preside at judicial sessions or appoint a member of the kray, oblast, okrug, or autonomous oblast court to preside, shall set dates for the hearing of cases, shall order the summoning of accused persons, witnesses, and expert witnesses to appear in court, and shall notify plaintiffs and defendants in civil cases of the date set for hearings.

IV. Supreme Courts of Autonomous Republics

38. In accordance with Section 107 of the USSR Constitution, supreme courts of autonomous republics shall be elected by the supreme soviets of autonomous republics for a term of 5 years.

39. The supreme courts of autonomous republics shall consist of a chairman, a deputy chairman, members of the court, and people's assessors called to participate in the trial of judicial cases.

40. The supreme courts of autonomous republics shall try criminal cases placed by law under their jurisdiction involving counterrevolutionary crimes, especially dangerous crimes against public administration, plundering of socialist property, especially important breaches of official duty and economic crimes, and civil cases placed by law under their jurisdiction involving disputes between state and public institutions, enterprises, and organizations.

The supreme courts of the autonomous republics shall also hear appeals from and protests against sentences, decisions, and rulings of people's courts.

41. The following shall operate in the supreme courts of autonomous republics:**

**See footnote to Section 33.

a. A judicial collegium for criminal cases to hear criminal cases placed by law under the jurisdiction of supreme courts of autonomous republics and appeals from and protests against sentences and rulings of people's courts;

b. A judicial collegium for civil cases to hear civil cases placed by law under the jurisdiction of supreme courts of autonomous republics and appeals from and protests against decisions and rulings of people's courts.

42. The judicial collegiums of supreme courts of autonomous republics shall hear cases sitting as a body of three: the presiding judge -- the chairman or a member of the supreme court -- and two people's assessors.

43. The judicial collegiums of supreme courts of autonomous republics shall consider appeals from and protests against sentences, decisions, and rulings of people's courts sitting as a body consisting of three members of the autonomous republic supreme court.

44. The chairmen of supreme courts of autonomous republics shall preside at judicial sessions or appoint a member of the autonomous republic supreme court to preside, shall set dates for the hearing of cases, order the summoning of accused persons, witnesses, and expert witnesses, and shall notify plaintiffs and defendants in civil cases of dates set for hearings.

V. Supreme Courts of Union Republics

45. The supreme courts of union republics are the highest judicial organs of union republics. The supreme courts of union republics shall supervise the judicial activity of all judicial organs of the union republic and of the autonomous republics, krays, oblasts, and okrugs which are a part of the given union republic.

46. In accordance with Section 106 of the USSR Constitution, the supreme courts of union republics shall be elected by supreme soviets of union republics for a term of 5 years.

47. The supreme courts of union republics shall consist of a chairman, deputy chairman, members of the court, and people's assessors called to participate in the hearing of judicial cases.

48. The following shall operate in the supreme courts of union republics:**

**See footnote to Section 33.

a. A judicial collegium for criminal cases to hear criminal cases placed by law within the jurisdiction of the supreme courts of union republics and appeals from and protests against sentences and rulings of kray, oblast, and other courts of the union republic;

b. A judicial collegium for civil cases to hear civil cases placed by law within the jurisdiction of supreme courts of union republics and appeals from and protests against sentences and rulings of kray, oblast, and other courts of the union republic.

49. The judicial collegiums of union republic supreme courts shall hear cases sitting as a body of three: the presiding judge -- the chairman or a member of the supreme court -- and two people's assessors.

50. The judicial collegiums of union-republic supreme courts shall hear appeals from and protests against sentences, decisions, and rulings of kray, oblast, and other courts of the union republic sitting as a body consisting of three members of the supreme court.

51. The supreme courts of union republics shall exercise supervision over the judicial activities of the courts of the republic by the following means:

a. By hearing the protests of the Prosecutor of the USSR, the union-republic prosecutor, the Chairman of the Supreme Court USSR,** and the chairman of the union-republic supreme court against sentences, decisions, and rulings which have become final and executive;

**See the "Statute on the Supreme Court USSR" (p 113-117) and the ukases of the Presidium, Supreme Soviet USSR, of 14 August 1954 and 25 April 1955 (pp 139-141).

b. By hearing in judicial session appeals and protests involving cases decided by the courts of the union republic.

52. The chairmen of supreme courts of union republics shall preside at judicial sessions or shall appoint a member of the union-republic supreme court to preside, shall set dates for the hearing of cases, shall order the summoning of accused persons, witnesses, and expert witnesses, and shall notify plaintiffs and defendants in civil cases of dates set for hearings.

VI. Special Courts of the USSR

53. On the basis of Section 102 of the USSR Constitution, the following special courts of the USSR shall operate:

a. Military tribunals;

b. Line railway transport courts;**

c. Line water transport courts.**

**Line and okrug railway and water transport courts were abolished by the law of 12 February 1957 (Vedomosti Verkhovnogo Soveta SSSR 1957, Law No 86), pp 121-122.

54. In accordance with Section 105 of the USSR Constitution, the chairmen, deputy chairmen, and members of special courts of the USSR shall be elected by the Supreme Soviet USSR for a term of 5 years.

55. People's assessors elected by kray and oblast soviets and by the supreme soviets of union and autonomous republics shall be called to participate in the judicial sessions of military tribunals and of line railway and water transport courts.**

**See footnote to Section 53.

56. Military tribunals and line railway and water transport courts** shall try cases sitting as a body of three: a presiding judge -- the chairman or a member of the court -- and two people's assessors, except when the case involved is required by law to be heard by three members of the court.

**See footnote to Section 53.

57. Military tribunals shall be organized:

a. In military okrugs, fronts, and naval fleets;

b. In armies, corps, and other military units and militarized institutions.

58. Military tribunals shall try cases involving military crimes and any other crimes placed under their jurisdiction by law.**

**See annotation on Section 27.

59. Military tribunals of okrugs, fronts, and naval fleets shall try criminal cases placed under their jurisdiction by law and shall hear appeals from and protests against sentences in cases tried by military tribunals of armies, corps, and other military units and militarized institutions.

60. Line railway and water transport courts shall try cases placed by law under their jurisdiction involving crimes aimed at undermining labor discipline in the transportation system and other crimes which disturb normal transportation operations.**

**See footnote to Section 51.

61. Line railway and water transport courts shall be organized by railway lines and water transport routes, respectively.

62. The chairmen of military tribunals and of line railway and water transport courts shall preside at judicial sessions or shall appoint a member of the military tribunal or line transport court to preside, shall set dates for the hearing of cases, and shall order the summoning of accused persons, witnesses, and expert witnesses to court.

VII. The Supreme Court USSR

63-77. Rescinded (12 February 1957).

VIII. Bailiffs

78. Bailiffs shall execute decisions and rulings in civil cases and implement that part of criminal sentences which deals with financial penalties.

79. Bailiffs shall be attached to people's courts, to okrug, kray, oblast, and autonomous oblast courts, and to supreme courts of autonomous and union republics. They shall be appointed by the people's commissariats of justice of union republics and in autonomous republics by people's commissariats of justice of the autonomous republics.**

**Bailiffs are attached to people's courts and are appointed by people's judges by provision of the ukase of the Presidium, Supreme Soviet USSR, of 4 August 1956 (Vedomosti Verkhovnogo Soveta SSSR 1956, Law No 356).

80. Orders for the execution of judicial sentences, decisions, and rulings issued to court bailiffs shall be binding upon all officials and citizens.

Statute on the Supreme Court USSR

Law passed by the Supreme Soviet USSR on 12 February 1957 (Vedomosti Verkhovnogo Soveta SSSR 1957, Law No 85)

1. In accordance with Section 104 of the USSR Constitution, the Supreme Court USSR shall be the supreme judicial body of the USSR.

The Supreme Court USSR shall be responsible for supervising the judicial activities of the judicial organs of the USSR and of the union republics within limits established by this statute. The Supreme Court USSR shall have the right of legislative initiative.

2. The Supreme Court USSR shall be responsible to the Supreme Soviet USSR, and during the periods between sessions of the Supreme Soviet USSR to the Presidium, Supreme Soviet USSR.

In effecting the administration of justice, members of the Supreme Court USSR and people's assessors of the Supreme Court USSR shall be independent and subject only to the law.

3. The Supreme Court USSR shall consist of the chairman of the Supreme Court USSR, the deputy chairmen of the Supreme Court USSR, the members of the Supreme Court USSR, people's assessors elected by the Supreme Soviet USSR, and the chairmen of union-republic supreme courts, who shall be members of the Supreme Court USSR ex officio.

The number of members of the Supreme Court USSR shall be fixed by the Supreme Soviet USSR in the process of electing the Supreme Court USSR.

4. In accordance with Section 105 of the USSR Constitution, the Supreme Court USSR shall be elected for a term of 5 years.

5. The Supreme Court USSR shall be guided in its operations by all-union and union-republic legislation.

6. The Supreme Court USSR shall act through the following bodies:

a. The Plenary Session of the Supreme Court USSR;

b. The Judicial Collegium for Civil Cases;

c. The Judicial Collegium for Criminal Cases;

d. The Military Collegium.

7. The Plenary Session of the Supreme Court USSR shall consist of the chairmen, the deputy chairmen, and the members of the Supreme Court USSR.

The Prosecutor-General USSR shall participate in convocations of the Plenary Session.

8. The Plenary Session of the Supreme Court USSR shall be summoned by the chairman of the Supreme Court USSR at least once every 3 months.

Two thirds of the membership of the Plenary Session shall constitute a quorum.

Plenary Session resolutions may be passed by a simple majority of votes of members of the Plenary Session participating.

9. The Plenary Session of the Supreme Court USSR shall:

a. Hear the protests of the chairman of the Supreme Court USSR and the Prosecutor-General USSR against decisions, sentences, and rulings of collegiums of the Supreme Court USSR;

b. Hear the protests of the chairman of the Supreme Court USSR and the Prosecutor-General USSR against the resolutions of union-republic supreme courts in the event that these resolutions are in conflict with all-union legislation or violate the interests of other union republics;

c. Examine materials relative to the generalization of judicial practice and judicial statistics and issue guiding explanations to the courts on questions of applying legislation in hearing court cases;

d. Place before the Presidium, Supreme Soviet USSR, proposals on questions subject to resolution by means of legislation and on questions relative to the clarification of laws of the USSR;

e. Resolve disputes between union-republic judicial organs.

10. The judicial collegiums shall be confirmed from among the members of the Supreme Court USSR by the Plenary Session of the Supreme Court USSR.

The chairman of the Supreme Court USSR shall have the right, if necessary, to effect changes in the personnel of the collegiums, such actions being subject to subsequent submission for approval to the Plenary Session of the Supreme Court USSR.

Members of military tribunals of okrugs and fleets may, if necessary, serve as reserve judges in hearings of judicial cases by the Military Collegium of the Supreme Court USSR.

11. The Judicial Collegium for Civil Cases and the Judicial Collegium for Criminal Cases of the Supreme Court USSR shall:

a. Hear, as courts of original jurisdiction civil and criminal cases of exceptional importance which have been placed under their jurisdiction by law;

b. Hear under ex officio judicial review procedure protests of the chairman of the Supreme Court USSR, of the Prosecutor-General USSR, and of their deputies against decisions and sentences of union-republic supreme courts in civil and criminal cases in the event that these decisions and sentences are in conflict with all-union legislation or violate the rights of other union republics.

12. The Military Collegium of the Supreme Court USSR shall:

a. Hear as a court of original jurisdiction criminal cases of exceptional importance which have been placed under its jurisdiction by law;

b. Hear appeals and protests seeking quashing or modification of sentences of military tribunals of okrugs and fleets in instances provided for by law;

c. Hear under ex officio judicial review procedure protests of the chairman of the Supreme Court USSR, of the Prosecutor-General USSR, and of their deputies, as well as the protests of the chairman of the Military Collegium of the Supreme Court USSR and the Chief Military Prosecutor, against sentences and rulings of military tribunals of okrugs and fleets.

13. The collegiums of the Supreme Court USSR shall hear cases as courts of original jurisdiction sitting as a body of three: a presiding judge -- who shall be a member of the Supreme Court USSR -- and two people's assessors.

Appeals and protests seeking quashing or modification of judgments, and protests under ex officio judicial review procedure, shall be heard by collegiums sitting as a body consisting of three members of the Supreme Court USSR.

14. Decisions of the Judicial Collegium for Civil Cases and sentences of the Judicial Collegium for Criminal Cases and the Military Collegium of the Supreme Court USSR shall be handed down in the name of the USSR.

15. The chairman of the Supreme Court USSR shall:

a. Submit to the Supreme Court USSR in accordance with this statute protests against decisions, sentences, and rulings of judicial collegiums of the Supreme Court USSR, and protests against the decisions, sentences, and resolutions of union-republic supreme courts;

b. Preside over convocations of the Plenary Session of the Supreme Court USSR, and may assume the chairmanship of judicial sessions of collegiums of the Supreme Court USSR hearing any case whatsoever;

c. Exercise general organizational guidance of the work of collegiums of the Supreme Court USSR;

d. Ensure the preparation of materials on questions subject to hearing by the Plenary Session of the Supreme Court USSR;

e. Organize the work of collecting all-union judicial statistics;

f. Guide the work of the apparatus of the Supreme Court USSR.

In the absence of the chairman of the Supreme Court USSR, all his rights and duties shall devolve upon a deputy chairman of the Supreme Court USSR.

16. Chairmen of collegiums of the Supreme Court USSR shall:

a. Guide the work of corresponding collegiums;

b. Preside over the preparatory executive sessions and judicial sessions of collegiums;

c. Form from among members of collegiums and people's assessors panels for judicial sessions of collegiums;

d. Present to the Plenary Session of the Supreme Court USSR reports on the activities of collegiums.

The chairman of the Military Collegium shall also be responsible for effecting organizational guidance of military tribunals.

17. The chairman, deputy chairmen, and members of the Supreme Court USSR, and the people's assessors of the Supreme Court USSR shall not be arrested, nor shall judicial proceedings be instituted against them, without the sanction of the Supreme Soviet USSR, or of the Presidium, Supreme Soviet USSR, between sessions.

18. The chairman, deputy chairmen, and members of the Supreme Court USSR, and the people's assessors of the Supreme Court USSR, may not be relieved of their duties before the expiration of their terms except by a decree of the Supreme Soviet USSR, or, between sessions, by a decree of the Presidium, Supreme Soviet USSR, that is subsequently submitted for approval to the Supreme Soviet USSR.

19. The structure of the apparatus of the Supreme Court USSR shall be approved by the Presidium, Supreme Soviet USSR.

20. The Supreme Court USSR shall publish the Byulleten' Verkhovnogo Suda SSSR (Bulletin of the Supreme Court USSR).

On the Formation of Presidiums in Supreme Courts of Union and Autonomous Republics, in Kray and Oblast Courts, and in Courts of Autonomous Oblasts**

**For the procedure to be followed by presidiums of courts in hearing cases, see the ukase of the Presidium, Supreme Soviet USSR, of 25 April 1955 (pp 119-121).

Ukase of the Presidium, Supreme Soviet USSR, of 14 August 1954 (Vedomosti Verkhovnogo Soveta SSSR 1954, Law No 360)

To strengthen the role of the local judicial organs in conducting judicial supervision, the Presidium, Supreme Soviet USSR, decrees:

1. Presidiums of supreme courts of union and autonomous republics and of kray, oblast, and autonomous-oblast courts shall be formed. These shall consist of the chairman, the deputy chairmen, and two members of the court.

Presidiums of supreme courts of union and autonomous republics shall be confirmed by presidiums of supreme soviets of union and autonomous republics; presidiums of kray, oblast, and autonomous oblast courts shall be confirmed by executive committees of kray, oblast, and autonomous-oblast soviets.

2. Be it enacted that presidiums of union-republic supreme courts shall hear criminal and civil cases under ex officio review procedure upon the protests of the Prosecutor-General USSR, of the chairman of the Supreme Court USSR**, of union-republic prosecutors, or of the chairmen of union-republic supreme courts, or of their deputies, against the sentences, decisions, and rulings of judicial collegiums of union-republic supreme courts.

3. Presidiums of autonomous-republic supreme courts and of kray, oblast, and autonomous-oblast courts shall hear criminal and civil cases under ex officio review procedure on the basis of protests of autonomous-republic, kray, oblast, and autonomous-oblast prosecutors and of chairmen of autonomous-republic supreme courts and of kray, oblast, and autonomous-oblast courts against appellate rulings of the judicial collegiums of these courts and against sentences and decisions of people's courts which have become final and executive.

4. Be it enacted that criminal and civil cases shall be heard by the presidiums of supreme courts of union and autonomous republics and by kray, oblast, and autonomous-oblast courts with the participation of the prosecutor of the union or autonomous republic, kray, oblast, or autonomous oblast, respectively.

5. Be it enacted that the resolutions of presidiums of union-republic supreme courts may be protested by the Prosecutor-General USSR and by the Chairman of the Supreme Court USSR** to the appropriate judicial collegium of the Supreme Court USSR.

**And their deputies. (See Section 11 of the ukase of the Presidium, Supreme Soviet USSR, of 25 April 1955 "On Procedure for the Review of Cases by Presidiums of Courts" (pp 119-121).

The resolutions of presidiums of autonomous-republic supreme courts and of kray, oblast, and autonomous-oblast courts may be protested by union-republic prosecutors and by chairmen of union-republic supreme courts** to the appropriate judicial collegiums of union-republic supreme courts.

**See footnote to Section 5 of this ukase.

On Procedure for the Review of Cases by Presidiums of Courts

Ukase of the Presidium, Supreme Soviet USSR, of 25 April 1955 (Vedomosti Verkhovnogo Soveta SSSR 1955, Law No 166)

The Presidium, Supreme Soviet USSR, decrees:

That the following procedure be established for the review of cases by the presidiums of supreme courts of union and autonomous republics and by the presidiums of kray, oblast, and autonomous-oblast courts.

1. Protests against sentences, decisions, and rulings of courts which have become final and executive may be made by the following:

By the Prosecutor-General USSR, the chairman of the Supreme Court USSR, and their deputies to the presidiums of all courts;

By union-republic prosecutors and chairmen of union-republic supreme courts and their deputies to the presidiums of all courts of the union republic;

By prosecutors of autonomous republics, krays, oblasts, and autonomous oblasts, and chairmen of autonomous-republic supreme courts and of kray, oblast, and autonomous oblast courts, to the presidium of the supreme court of the autonomous republic or to the kray, oblast, or autonomous oblast court, respectively.

2. Protests against the sentences, decisions, and rulings of the people's courts of national okrugs and against rulings of okrug courts may be made by the union-republic prosecutor and the chairman of the supreme court of the union republic and their deputies to the appropriate collegium of the supreme court of the union republic.

3. Protests against second sentences, decisions, rulings, or resolutions passed in connection with the reversal of a prior sentence, decision, ruling, or resolution under appellate procedure or under ex officio review procedure may be made on general grounds regardless of the reasons for the reversal of a court's first sentence, decision, ruling, or resolution.

4. A majority of the members of the presidium shall constitute a quorum for the sessions of presidiums of supreme courts of union and autonomous republics and of kray, oblast, and autonomous oblast courts.

When cases are reviewed by court presidiums under ex officio review procedure in consequence of protests, the participation of the corresponding prosecutor -- of the union-republic prosecutor or his deputy** or of the prosecutor of the autonomous republic, kray, oblast, or autonomous oblast -- shall be obligatory.

**See Section 31 of the "Statute on Supervision by Prosecutors in the USSR," confirmed by ukase of the Presidium, Supreme Soviet USSR, of 24 May 1955 (p 127).

5. The person who files a protest under ex officio review procedure shall have the right to withdraw it before the court presidium begins the hearing of the case.

6. The chairman, or a member of the presidium or of the court designated by him, shall report on cases arising under ex officio review procedure in consequence of protests. The report shall set forth the circumstances of the case, the sentence, decision, ruling, or resolution passed on the case, and the content of the protest.

The prosecutor shall give his opinion on the case.

7. Court presidiums shall pass resolutions by simple majority vote. If the vote is tied, the protest, not having received a majority, shall be denied.

Any member of a court presidium who dissents from the decision of the majority may set forth his dissenting opinion in written form and the latter shall be appended to the case.

8. Any member of a court presidium who has participated in the hearing of a case in a court of original jurisdiction, in an appellate court, or under ex officio review procedure shall not participate in the hearing of the same case as a member of a court presidium.

If a majority of a court presidium has participated in the hearing of a case in a court of original jurisdiction, in an appellate court, or under ex officio review procedure, the case shall be transferred to the next higher court for hearing under ex officio review procedure.

9. Court presidiums shall be guided in passing resolutions by the provisions of procedural legislation in force.

10. The resolutions of court presidiums shall indicate the following: the time and place of hearing of the case, the panel of judges who participated in the session of the presidium, participation of the prosecutor, the reporter for the case, the circumstances of the case, the content of the sentence, decision, or ruling of the court of original jurisdiction and of all subsequent rulings and resolutions on the case, the content of the protest, and specification of the court presidium's resolution on the case in question with an explanation of the reasons for the resolution.

The ruling shall be signed by the judge presiding at the presidium session.

11. Resolutions of presidiums of autonomous-republic supreme courts and of kray, oblast, and autonomous-oblast courts may be protested by the union-republic prosecutor, the chairman of the supreme court of the union republic, or their deputies to the appropriate judicial collegium of the supreme court of the union republic.

Resolutions of presidiums of union-republic supreme courts may be protested by the Prosecutor-General USSR, the Chairman of the Supreme Court USSR, or their deputies to the appropriate judicial collegium of the Supreme Court USSR.**

**See the "Statute on the Supreme Court USSR" (pp 113-117).

On the Abolition of Transport Courts

Law passed by the Supreme Soviet USSR on 12 February 1957 (Vedomosti Verkhovnogo Soveta SSSR 1957, Law No 86)

In view of the substantail decline in the number of offenses violating normal railway and water transport operations, cases involving which have been under the jurisdiction of transport courts, and with the aim of further extending the rights of union-republic judicial organs, the Supreme Court USSR decrees:

1. Line and okrug railway and water transport courts shall be abolished.

2. All cases which were under the jurisdiction of transport courts shall be placed under the jurisdiction of union-republic judicial organs. These cases shall be heard by people's courts, oblast courts, kray courts, and union- and autonomous-republic supreme courts, respectively, by analogy with their established jurisdictions.

3. The Supreme Court USSR shall submit to the Presidium, Supreme Soviet USSR, a list of legislative acts which are no longer in force by virtue of the passage of this law.

On Applying the Law of the USSR of 12 February 1957 "On Abolishing Transport Courts"

Decree of the Presidium, Supreme Soviet USSR, of 29 March 1957 (Vedomosti Verkhovnogo Soveta SSSR 1957, Law No 220)

In connection with passage of the law of the USSR of 12 February 1957 "On Abolishing Transport Courts," the Presidium, Supreme Soviet USSR, decrees:

1. Be it explained that of the cases which were under the jurisdiction of transport courts, cases involving state crimes -- including those covered by Sections 17-2 and 17-3 of the "Statute on State Crimes" (Sections 59-3b and 59-3c of the RSFSR Criminal Code and corresponding sections of other union-republic criminal codes) -- cases involving large-scale plundering of railway and water transport cargoes, and cases involving service crimes committed by leading railway and water transport workers shall be subject to trial, depending on the places in which such crimes are committed, by the appropriate kray, oblast, okrug, and autonomous-oblast courts, by autonomous-republic supreme courts, and by supreme courts of union republics which are not divided into oblasts.

The remaining cases shall be subject to trial by the people's courts having jurisdiction over the places in which the crimes are committed.

2. Appeals from and protests against sentences of transport courts that have not become final and executive shall be subject to review by the judicial collegiums for criminal cases of supreme courts of union republics, the legislation of which was applied in the trial of the cases.

3. Sentences and rulings of transport courts that have become final and executive may be protested under established procedures as follows:

a. With regard to cases originally tried by okrug transport courts and cases specified in Paragraph 1, Section 1 of this decree -- to the judicial collegiums for criminal cases of union-republic supreme courts;

b. With regard to all other cases tried by transport courts -- to the presidiums of kray, oblast, and autonomous-oblast courts, to autonomous-republic courts, and to the supreme courts of union republics which are not divided into oblasts.

4. Protests against rulings of the judicial collegiums of the Supreme Court USSR, submitted under appellate procedure or under ex officio review procedure with regard to cases tried by transport courts, shall be reviewed by the Plenary Session of the Supreme Court USSR.

Statute on Supervision by Prosecutors in the USSR

Confirmed by the ukase of the Presidium, Supreme Soviet USSR, of 24 May 1955 (Vedomosti Verkhovnogo Soveta SSSR 1955, Law No 222)

(Extract)

Chapter III. Supervision Over Execution of the Laws in the Operations of Police Inquiry and Pretrial Investigation Agencies

17. The Prosecutor-General USSR and the prosecutors subordinate to him shall act as follows in exercising supervision over precise execution of the laws in the work of police inquiry and pretrial investigation agencies:

(1) Prosecute under criminal law persons guilty of committing crimes and take steps to ensure that no crime shall go unsolved and that no criminal shall evade justice;

(2) Take strict care that no citizen shall be subjected to illegal or unfounded prosecution or to any other unlawful abridgment of his rights;

(3) Take care that police inquiry and pretrial investigation agencies strictly observe the procedure established by law for investigating crimes.

18. Prosecutors shall see to it that no person shall be subjected to arrest except by court order or with the prosecutor's approval.

In deciding whether or not to approve an arrest, prosecutors must carefully familiarize themselves with all the materials providing grounds for the arrest and, when necessary, shall personally question the person subject to arrest.

19. In supervising the investigation of crimes, prosecutors may:

(1) Issue instructions to police inquiry and pretrial investigation agencies on the investigation of crimes, on the adoption, modification, or revocation of measures taken against accused persons to prevent evasion of justice, and on searches for criminals who have concealed themselves;

(2) Demand from police inquiry and pretrial investigation agencies documents, materials, and other information concerning crimes committed in order to check on criminal cases;

(3) Participate in police inquiries and pretrial investigations of criminal cases and, when necessary, personally conduct an investigation of any case;

(4) Return criminal cases to police inquiry or pretrial investigation agencies with their instructions on conducting supplementary investigation;

(5) Revoke unlawful or unfounded orders of police inquiry and pretrial investigation agencies;

(6) Discharge the pretrial investigator or the person conducting the police inquiry in a case from further conduct of the pretrial investigation or police inquiry if these persons have permitted any violation of law in the investigation of the case;

(7) Remove any case from a police inquiry agency and submit it to a pretrial investigation agency, or transfer a case from one pretrial investigation agency to another, in order to achieve the most complete and objective investigation of the case;

(8) Entrust to police inquiry agencies individual investigative acts in cases being investigated by pretrial investigators of agencies of prosecutors' offices, in particular the following: taking into custody, compelling a person to appear, arresting the accused, conducting searches and seizures, and searching for criminals in hiding;

(9) Dismiss criminal cases when the grounds specified by law exist.

20. The instructions of the prosecutor to police inquiry and pre-trial investigation agencies in connection with their investigation of criminal cases, issued under the procedures provided for by procedural law, shall be binding upon those agencies.

21. Within the period established by law, prosecutors shall examine complaints received by them against the actions of police inquiry or pre-trial investigation agencies and shall notify the persons making the complaints of his decisions on them.

Chapter IV. Supervision Over the Legality of and Grounds for Sentences, Decisions, Rulings, and Resolutions of Judicial Organs

22. The Prosecutor-General USSR and the prosecutors subordinate to him shall supervise the legality of and grounds for sentences, decisions, rulings, and resolutions issued by judicial organs.

23. The Prosecutor-General USSR and the prosecutors subordinate to him shall:

(1) Participate in executive sessions of courts;

(2) Participate in hearings of civil and criminal cases in judicial session and offer opinions on questions arising during judicial trials;

(3) Conduct the state prosecution in court during the trial of criminal cases;

(4) File suits under civil procedure or civil suits under criminal procedure and advocate the suits in court, if the protection of state or public interests or of the rights and legal interests of citizens so demand;

(5) Enter protests, according to the procedure established by law, against illegal and unfounded sentences, decisions, rulings, and resolutions of judicial organs;

(6) Offer opinions concerning civil and criminal cases under consideration by higher courts on appeal or protest;

(7) Exercise supervision over the execution of court sentences.

24. The Prosecutor-General USSR and all the prosecutors subordinate to him shall have the right, within the limits of their competence, to demand any civil or criminal cases from judicial organs for examination under ex officio review procedure.

25. The following persons shall have the right to enter protests against court sentences, decisions, rulings, and resolutions which have become final and executive:

The Prosecutor-General USSR and his deputies -- with regard to the sentences, decisions, rulings, and resolutions of any court of the USSR or of union or autonomous republics;

Union-republic prosecutors and their deputies -- with regard to sentences, decisions, rulings, and resolutions of courts of the union republic and of autonomous republics within the union republic, except for resolutions of the presidium of the supreme court of the union republic;

Autonomous-republic prosecutors -- with regard to the sentences, decisions, and rulings of people's courts of the autonomous republic, and rulings of judicial collegiums of the supreme court of the autonomous republic acting as appellate courts;

Kray, oblast, and autonomous-oblast prosecutors -- with regard to sentences, decisions, and rulings of people's courts, and rulings of judicial collegiums of kray, oblast, or autonomous-oblast courts, respectively, acting as appellate courts;

The Chief Military Prosecutor and the Chief Transport Prosecutor -- with regard to the sentences and rulings of any military tribunal or any transport court, respectively;

Military prosecutors of military okrugs (fleets) -- with regard to the sentences and rulings of lower military tribunals.

26. Protests against sentences, decisions, rulings, or resolutions of courts may be withdrawn by the prosecutor who enters the protest or by a higher prosecutor before the protest is considered by the court.

27. The Prosecutor-General USSR and his deputies may stay the execution of a protested sentence, decision, ruling, or resolution of any court of the USSR or of the union or autonomous republics until the case is decided under ex officio review procedure.

Prosecutors of union republics may stay the execution of protested sentences, decisions, rulings, and resolutions of any union-republic court, and of any autonomous-republic court within the union republic, until the case has been decided under ex officio review procedure.

28. The participation of the Prosecutor-General USSR in Plenary Sessions of the Supreme Court USSR shall be obligatory.

29. If the Prosecutor-General USSR considers that an order of the Plenary Session of the Supreme Court USSR is not in accord with the law, he shall submit a report thereon to the Presidium, Supreme Soviet USSR.

30. The Prosecutor-General USSR shall have the right to submit for the consideration of the Plenary Session of the Supreme Court USSR recommendations on issuing guiding instructions to judicial organs on problems of judicial practice.

31. The prosecutors of union and autonomous republics, krays, oblasts, and autonomous oblasts shall participate in the hearing of criminal and civil cases by the presidiums of supreme courts of union and autonomous republics and by kray, oblast, and autonomous oblast courts.

Chapter V. Supervision of Observance of Legality in Places of Confinement

32. The Prosecutor-General USSR and the prosecutors subordinate to him, within the limits of their competence, shall exercise supervision to ensure that only persons taken into custody with the approval of a prosecutor or by resolution of a court are kept in places of confinement and that the rules established by law regarding the maintenance of confined persons are observed.

Agencies of prosecutors' offices shall be responsible for the observance of socialist legality in places of confinement.

33. Prosecutors shall be obligated systematically to visit places of confinement, immediately to familiarize themselves with the activities of their administrations, to suspend execution of illegal orders and regulations issued by administrations of places of confinement, to protest such orders under established procedures, and to take steps to bring to criminal or disciplinary responsibility persons guilty of violating legality in places of confinement.

34. Prosecutors shall promptly release from custody all persons who have been illegally arrested or who are being illegally held in custody in places of confinement.

35. In exercising supervision over the legality of maintaining persons committed to places of confinement, the Prosecutor-General USSR and the prosecutors subordinate to him -- within the limits of their competence -- shall have the following rights:

(1) To visit places of confinement at any time and to have full access to the entire premises to check on the observance of procedures established by law for the maintenance of persons under confinement;

(2) To familiarize themselves with the documents on the basis of which persons are being confined;

(3) To conduct personal interrogations of confined persons;

(4) To verify whether the orders of administrations of places of confinement which establish the conditions and regimen for keeping persons under confinement are in accord with the law;

(5) To demand personal explanations from representatives of administrations of places of confinement regarding violations of legality in keeping persons under confinement.

36. Administrations of places of confinement must submit to a prosecutor within one day complaints or statements addressed to him by confined persons.

Prosecutors who receive complaints or statements from persons under confinement shall consider them within the period established by law, take the necessary action, and notify the complainant of his decision.

Prosecutors shall see to it that the complaints and statements of confined persons are promptly forwarded by administrations of places of confinement to the agencies or officials to whom they are addressed.

37. Administrations of places of confinement must follow the recommendations of prosecutors regarding observance of rules established by law on keeping persons in confinement.

APPENDIX B. ANNOTATIONS ON SECTIONS OF THE CODE

Annotation on Section 24

1. There shall be transferred to the jurisdiction of people's courts all civil and criminal cases which were under the jurisdiction of abolished okrug courts, with the exception of cases involving crimes covered by Sections 58-2--58-14, Paragraph 1 of Section 59-2, Sections 59-3, 59-3a, 59-3b, 59-5, and 59-6, Paragraph 2 of Section 59-7, Paragraph 1 of Section 59-8, Section 59-9, and Paragraph 3 of Section 167 of the RSFSR Criminal Code, which shall be subject to trial by kray (oblast) courts (Section 3, Part I (A), of the VTsIK and Sovnarkom decree of 10 October 1930, RSFSR Laws 1930, Law No 627).

2. There shall be removed from the jurisdiction of military tribunals and placed under the jurisdiction of oblast and kray courts and of union- and autonomous-republic supreme courts, respectively, the following cases:

a. Cases involving crimes committed by line, administrative, and housekeeping personnel of the militia which are directed against the system of performing service established for them;

b. Cases involving service crimes committed by personnel of the militarized guard of industrial enterprises, of railway, water, and air transport, of other governmental departments, and of corrective labor camps and colonies, and prison supervisory personnel, except for the militarized guard of the first category;

c. Cases involving the commission by nonmilitary personnel of crimes covered by the ukase of the Presidium, Supreme Soviet USSR, of 9 June 1947 "On Responsibility for the Disclosure of State Secrets and for the Loss of Documents Containing State Secrets." (Ukase of the Presidium, Supreme Soviet USSR of 11 September 1953)

3. See the decree of the Presidium, Supreme Soviet USSR, of 29 March 1957, "On Applying the Law of the USSR of 12 February 1957, 'On Abolishing Transport Courts'" (pp 122-123).

4. (2) Cases involving crimes covered by Sections 2 and 4 of the ukase of the Presidium, Supreme Soviet USSR, "On Responsibility Under Criminal Law for Plundering State and Public Property," when the amount plundered is great, shall be under the jurisdiction of kray, oblast, and okrug courts and of supreme courts of union and autonomous republics. All other cases involving crimes covered by the ukases of 4 June 1947 shall be under the jurisdiction of people's courts. (Resolution of the Plenary Session of the Supreme Court USSR of 22 August 1947, No 12/6/V)

5. (1) Crimes committed in office by chairmen of kolkhozes shall be tried by oblast and kray courts, by the supreme courts of autonomous republics, and by the supreme courts of union republics without oblast divisions. (Resolution of the Plenary Session of the Supreme Court USSR of 22 August 1947, No 12/5/V)

6. Kray (oblast) courts shall have the right, at their discretion, to remove from the jurisdiction of a people's court any case or group of cases and either try them or transfer them to another people's court. (Section 7, Part I (A) of the decree of VTsIK and Sovnarkom RSFSR of 10 October 1930, RSFSR Laws 1930, Law No 627)

7. All cases involving charges of breach of office and economic crimes against directors of sovkhozes, sovkhoz trusts, and machine-tractor stations and shops (MTS and MTM) and their deputies, and against all types of industrial officials not lower than directors, their deputies, and chief engineers in enterprises of all-union and republic subordination, shall be transferred to the jurisdiction of kray and oblast courts, of supreme courts of autonomous republics, and of supreme courts of union republics without oblast divisions, provided that these cases shall be heard by circuit sessions in the given local area. (Extract from the resolution of the 47th Plenary Session of the Supreme Court USSR of 7 June 1934)

8. (4) Cases involving the release of low quality, incomplete, or substandard industrial products shall be under the jurisdiction of okrug, oblast, and kray courts, supreme courts of autonomous republics, and supreme courts of union republics without oblast divisions, and, when necessary, shall be tried by okrug and equivalent military tribunals, okrug railway transport courts, and line water transport courts.** (Resolution of the Plenary Session of the Supreme Court USSR of 30 September 1949, No 13/9/V)

**Transport Courts have been abolished. See the law of 12 February 1957 (pp 121-122).

9. See Sections 21, 32, and 40 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics."

Annotation on Section 27

1. The following cases shall be under the jurisdiction of military tribunals:

a. Cases involving all crimes committed by military personnel and all crimes committed by persons subject to call-up for military service during training musters.

Military tribunals shall also have jurisdiction over cases involving crimes committed by operational personnel of the Ministry of Internal Affairs USSR and by command personnel of the Main Administration of Camps and Colonies of the Ministry of Justice USSR.** (According to the text of the ukase of the Presidium, Supreme Soviet USSR of 11 September 1953 "On Revising the Jurisdiction of Military Tribunals")

**The Ministry of Internal Affairs USSR.

b. Cases involving crimes committed by persons not covered by Clause a of this section which are covered in Paragraph 1, Section 6 of the "Statute on State Crimes" (counterrevolutionary crimes and crimes against public administration which are especially dangerous to the USSR), when these crimes have as their object information of a military nature. (According to the text of the decree of TsIK and Sovnarkom USSR of 27 February 1934, USSR Laws 1934, Law No 78)

Annotation on Section 29

1. (a) When a case is transferred from a court of one union republic to a court of another union republic on the grounds that the general rules of jurisdiction provided for by Section 29 of the RSFSR Criminal Code and by corresponding sections of the criminal procedural codes of other union republics place the case under the jurisdiction of the other court, a ruling giving the reasons therefor -- passed in preparatory executive session by the court transferring the case -- shall be submitted along with the case to the supreme court of the union republic in which the court transferring the case is located. If this supreme court considers the ruling of the preparatory executive session correct, it shall submit the case to the proper court of the other union republic through the chairman of the supreme court of that republic.

(b) If it is necessary to transfer a case from a court of one union republic to a court of another union republic for reasons of expediency (Section 30 of the RSFSR Criminal Procedural Code and corresponding sections of the criminal procedural codes of other union republics), the court shall submit the case, with a ruling giving the reasons therefor -- passed in preparatory executive session -- to the chairman of the supreme court of the union republic, who, if he agrees with the ruling, shall forward the case to the chairman of the Supreme Court USSR. If he agrees with the ruling of the preparatory executive session, the chairman of the Supreme Court USSR shall forward the case to the court of the proper union republic through the chairman of the supreme court of that republic.

(c) If he considers a ruling of a preparatory executive session to transfer a case to a court in another union republic incorrect (Clauses a and b of this decree), the chairman of the supreme court of the union republic whose court transferred the case and the chairman of the Supreme Court USSR may protest the ruling under the procedure provided for by Section 16 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics."

(d) According to Paragraph 3, Section 13, of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union and Autonomous Republics," jurisdictional disputes shall not be permitted between courts of different union republics. (Resolution of the Plenary Session of the Supreme Court USSR of 16 July 1939)

Annotation on Section 41

1. Section 19 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" provides that in the event of the temporary absence of a people's judge (due to his illness, departure on vacation, etc.), the rayon soviet shall appoint one of the people's assessors to perform the duties of the judge in his absence.

Therefore, according to the law, a people's assessor may perform the duties of a people's judge only if the people's judge is absent and only for the period of his absence.

Nevertheless, in judicial practice instances occur when the duties of a people's judge are entrusted to a people's assessor while the people's judge is present. Sometimes the duties of the people's judge are entrusted to people's assessors without an appropriate decision to that effect by the rayon soviet, or, even though such a decision is taken, it does not specify for what period the people's assessor shall perform the duties of the absent people's judge. As a result of such violations, in some people's courts, along with the people's judges, judicial cases are tried by people's assessors who in these instances assume the official status of "deputy people's judge," which status is not provided for by law. Such practices constitute gross violations of the law and reduce the responsibility of the people's judges for the administration of justice in the field of activity of people's courts and in some cases facilitate avoidance of trials of complicated judicial cases by people's judges.

People's assessors are sometimes appointed temporarily to sit as people's judges when the latter are disqualified from participation in the trial of a case by reason of being subject to challenge (Sections 41--43 and 45 of the RSFSR Criminal Procedural Code, Section 104 of the RSFSR Civil Procedural Code, and corresponding sections of the criminal procedural codes and civil procedural codes of other union republics). Moreover, in such instances a case is subject to transfer to a peoples' court of another precinct by direction of a higher court.

In view of the foregoing, the Plenary Session of the Supreme Court USSR has resolved:

That the attention of the courts be directed to the necessity of strictly observing the provisions of Section 19 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics" and to the intolerable nature of the aforementioned violations of law.

Sentences and decisions in cases tried under the chairmanship of people's assessors in violation of Section 19 of the "Law on the Judicial System" shall be subject to reversal as having been rendered by a court of illegal composition. (Resolution of the Plenary Session of the Supreme Court USSR of 20 March 1953, No 3)

Annotation on Section 44

1. When a sentence or decision of a people's court is overruled by a higher court and the case remanded for retrial by the [same] people's court with a different panel of judges, it shall be subject to transfer to another people's court by ruling of the higher court which overruled the sentence or decision. (Resolution of the Plenary Session of the Supreme Court USSR of 19 March 1948, No 6/6/V)

2. (1) The resolution of the 47th Plenary Session of the Supreme Soviet USSR has in view disqualification of a judge who has taken part in the trial of the case in a lower court to participate in a hearing of the same case in a higher court. The resolution of the Plenary Session should be understood in the sense that a judge who has participated in a court of original jurisdiction may not participate in the hearing by an appellate court of an appeal from or protest against the sentence passed with the participation of the judge in question, and that a judge may not participate in a court which is hearing -- under ex officio review procedures -- a protest against a ruling of an appellate court in the rendering of which he participated.

(2) During the rehearing of a case in an appellate court or in a court acting under ex officio review procedures, a judge who participated in the original hearing of the case in the same court shall be disqualified (by analogy with Section 44 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics) from participation only if the first ruling, rendered by a panel in which he participated, has been overruled under ex officio review procedure.

Therefore, specifically, a judge who has participated in passing a ruling to overrule a sentence, insofar as such ruling has not been overruled under ex officio review procedure, may participate in the hearing of an appeal from or a protest against the second sentence passed on the given case. (Resolution of the Plenary Session of the Supreme Court USSR of 22 August 1940, No 30/17/V)

Annotation on Section 55

1. See Sections 1, 2, 3, and 4 of annotation on Section 239.

Annotation on Section 63

1. (2) The basic task of the Bureau of State Accountancy Experts of the Ministry of Finance RSFSR and its affiliates (of expert accountants) shall be that of rendering expert accountancy services in connection with criminal and civil cases on the basis of the resolutions and rulings of investigative agencies, prosecutors' offices, courts, and arbitration tribunals.

(6) Expert accountancy services shall be rendered by expert accountants on the staff of or registered with the Bureau of State Accountancy Experts of the Ministry of Finance RSFSR or its affiliates.

(7) Assignments to render expert accountancy services shall be issued to the appropriate expert accountant by the director of the Bureau of State Accountancy Experts of the Ministry of Finance USSR or its affiliate (by an expert accountant). Such assignments shall specify the number of hours and duration of the work by agreement with the agency which prescribed the expert examination. An assignment to a nonstaff accountant shall, in addition, specify the hourly rate to be paid in the given case in accordance with the rates stipulated in Section 21 of this statute.

(8) Prior to being transmitted to an investigative agency, a prosecutor's office, a court, or an arbitration tribunal, the opinion of an expert accountant shall be reviewed by the Bureau of State Accountancy Experts of the Ministry of Finance RSFSR or its affiliate within a 3-day period from the standpoint of methods for rendering expert accountancy services and of correct formulation of the opinion, after which the opinion shall be initialed by the director of the bureau or its affiliate.

(9) When expert accountancy services are performed in a place other than the location of the Bureau of State Accountancy Experts of the Ministry of Finance RSFSR or of its affiliates, the expert accountant's opinion may be transmitted directly to the agency which prescribed the expert examination, in which case a copy of the opinion shall at the same time be forwarded to the bureau or its affiliate.

(18) Expert accountants shall not have the right:

a. To enter upon the performance of expert accountancy services in the absence of an assignment from the Bureau of State Accountancy Experts of the Ministry of Finance RSFSR or its affiliate issued in accordance with procedures prescribed in Section 7 of this statute;

b. To perform expert accountancy services in connection with documentation and accounts of institutions, enterprises, or organizations by which they are employed, in institutions, enterprises, or organizations subordinate to that in which they are employed, or in institutions, enterprises, or organizations by which they have been employed during the preceding 3 years;

c. To involve outside persons in the performance of expert accountancy services for which they have been made responsible;

d. To issue opinions on questions not connected with their special knowledge in the field of accountancy.

(21) Payment for the performance of expert accountancy services rendered pursuant to assignments of the Bureau of State Accountancy Experts of the Ministry of Finance RSFSR or of its affiliate by any nonstaff expert accountant shall be made by the bureau or its affiliate at the rate of 6 rubles per hour of work.

In exceptional circumstances, when the services of a highly qualified specialist have been obtained and when the work is especially complicated, a higher rate of pay -- but not more than 20 rubles per hour of work -- may be established by agreement with the agency which prescribed the expert examination.

(22) Payment for work performed by a nonstaff expert accountant shall be made by the bureau or its affiliate on completion of expert accountancy services on the basis of an accounting rendered by him as to the actual amount of time spent in performing expert accountancy services and presented by the agency which prescribed the expert examination, provided that the norms established in accordance with Sections 7 and 21 of this statute shall not be exceeded.

(23) Payment of travel expenses of nonstaff expert accountants pursuant to the performance by them of expert accountancy services at other than their place of regular employment shall be made by the bureau or its affiliate in accordance with norms specified in Sections 1--6 of instructions approved by the decree of the Sovnarkom USSR of 29 April 1939, No 597.**

**See Section 1 of annotation on Section 65.

(24) Funds due the bureau or its affiliates for the performance of expert examinations by staff and nonstaff expert accountants shall, upon presentation of vouchers, be transferred to the current special funds account of the Ministry of Finance RSFSR or of the appropriate autonomous-republic ministry of finance or kray, oblast, or city (Leningrad, Moscow) financial division as follows:

a. By investigative and judicial organs, with regard to criminal and civil cases, out of appropriations assigned them for these purposes and out of sums paid by parties to cases;

b. With respect to cases decided by arbitration agencies, by the given arbitration agency out of funds collected from one of the parties in accordance with its decision.

(25) The bureau and its affiliates shall in every case forward to the agency which prescribed an expert examination an accounting of expenditures connected with the performance of expert accountancy services in accordance with the previously specified rates for inclusion in court costs subject to collection, in the form of state income, from the accused in criminal cases and from the parties in civil cases.

(26) Instructions on the application of this statute shall be issued by the Ministry of Finance RSFSR by agreement with the Office of the Prosecutor RSFSR, the Ministry of Justice RSFSR, and State Arbitrage Under the Council of Ministers RSFSR. (Extracts from the "Statute on the Bureau of State Accountancy Experts of the Ministry of Finance RSFSR," approved by the decree of the Council of Ministers RSFSR of 20 February 1957, No 50)

Annotation on Section 65

1. (1) Witnesses, expert witnesses, and interpreters summoned by investigative and judicial organs to give testimony or opinions in civil and criminal cases shall have the right to be reimbursed expenses incurred in traveling from their place of residence to the place in which they are summoned to appear, and return.

(2) Travel expenses shall be paid if the residence of persons summoned is at a distance of more than 3 kilometers from the place in which they are summoned to appear.

Note. Travel expenses shall also be paid in the event the distance does not exceed 3 kilometers if the person summoned cannot walk the distance for reasons of health or age.

(3) Payment of expenses for travel by railway shall be on the basis of hard-seat car rates, by ship on the basis of the third-class rate, and by highway on the basis of actual expense.

(4) Witnesses, expert witnesses, and interpreters summoned by investigation agencies or courts located outside the place of their permanent residence who must remain at the place to which they are summoned for more than 24 hours shall have the right to be reimbursed for the rental of accommodations on the basis of accounts presented, but not more than 10 rubles a day in Moscow, Leningrad, and Kiev, 7 rubles in the capital cities of union and autonomous republics, in kray and oblast centers, and in cities designated independent administrative and territorial entities, and 5 rubles in all other places.

(5) Witnesses, expert witnesses, and interpreters summoned to appear before judicial or investigation agencies who are workers or employees shall retain their normal wages at their places of work, in accordance with Section 78 of the Code of Labor Laws.

(6) When witnesses, expert witnesses, or interpreters are summoned by an investigation agency or court from their place of permanent residence to another locality in which they must remain for more than 24 hours, they shall be paid a per diem of 5 rubles a day; persons who retain their wages at their place of work shall also have a right to receive the per diem payment.

(7) Expert witnesses shall be paid for their work at the rate of 3 to 5 rubles per hour. Expert examinations conducted in the centers of union republics, in Leningrad and Kharkov, and in outlying localities of the first zone** shall be remunerated at a rate of 5 to 6 rubles an hour.***

**The list of outlying localities in the USSR which was established by the decree of the People's Commissariat of Labor USSR of 1 November 1930 was rescinded by the decree of the Sovnarkom USSR of 20 October 1942 (USSR Laws 1942, Law No 151).

***See Section 1 of annotation on Section 63.

In exceptional cases when highly qualified specialists are called in for expert opinions, a higher scale of payment may be set by agreement with the expert witness, but it shall not be higher than 20 rubles per hour.**

**See Section 1 of annotation on Section 63.

(8) Expert witnesses and interpreters shall be remunerated for the work they perform pursuant to resolutions of investigative agencies or prosecutors' offices or court rulings.

The amount of payment shall be determined by the agency which summoned the expert witness** or interpreter in the light of the expert witness' qualifications, the difficulty of the work, and the time spent on the job, based on information furnished by the expert witness or interpreter. When necessary, an appropriate organization may be asked for an opinion.

**See Section 1 of annotation on Section 63.

(9) For written translations, interpreters shall receive payment of 2 to 3 rubles per 1,000 printed (manuscript) symbols.

For serving as interpreter at court sessions or interrogations conducted by investigation agencies, interpreters shall receive 3 rubles per hour, and in the centers of union republics, in Leningrad and Kharkov, and in outlying localities in the first zone**, 4 rubles per hour.

**The list of outlying localities in the USSR which was established by the decree of the People's Commissariat of Labor USSR of 1 November 1930 was rescinded by the decree of the Sovnarkom USSR of 20 October 1942 (USSR Laws 1942, Law No 151).

(10) All amounts specified in this instruction shall be paid by the agency which issues the summons: in criminal cases, from funds especially allotted for such requirements, and in civil cases, from the funds paid by the parties, except when the parties are relieved of payment of expenses of the case. In the latter case, payment shall be made from budgetary funds.**

**See Section 1 of annotation on Section 63.

(11) The money paid by the courts to witnesses and expert witnesses in criminal cases shall be included in the court costs to be charged to the convicted person. Court costs charged to convicted persons shall revert to the union or republic budget, depending on which of these budgets the judicial organ trying the case operates under.**

**See Section 1 of annotation on Section 63.

(12) Agencies which summon witnesses, expert witnesses,** and interpreters shall pay them immediately upon the completion of their duties, irrespective of whether or not the corresponding amount has actually been received or required from a party as an expense of the case or from a convicted person as a court cost.

**See Section 1 of annotation on Section 63.

Note. Expenses of members of the military personnel summoned to court as witnesses, expert witnesses, or interpreters (cost of travel, quarters, and per diem) shall be reimbursed by the courts upon the request of the military unit and according to the norms established by the "Statute on Monetary Allowances in the Workers' and Peasants' Red Army." The courts shall not reimburse expenses to the serviceman himself.

(13) This instruction shall not apply to experts in forensic medicine on the staff of agencies of the People's Commissariat of Health. (Instruction of the People's Commissariat of Justice USSR and the Office of the Prosecutor of the USSR, confirmed by the decree of the Council of People's Commissars USSR of 29 April 1939, No 597)

Annotation on Section 66

1. On the procedure for taking, safeguarding, and releasing physical evidence see the Instruction of the People's Commissariat of Justice and the Prosecutor USSR of 17 November 1943, No 90/86.

Annotation on Section 69

1. (4) In convicting offerers of bribes, the money or other valuables given by them to officials or intermediaries shall be subject in all cases to confiscation as physical evidence, by analogy with Subsection 1, Section 69, of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 24 June 1949, No 7/2/V)

Annotation on Section 72

1. See annotation on Section 65.

Annotation on Section 80

1. (1) Rulings of preparatory (executive) sessions of courts shall be rendered by the judges participating in the session after conference and shall be issued as a separate document signed by these judges.

(2) Rulings of judicial sessions of courts of original jurisdiction which must be explained in detail, either because of direct instructions in the law or because of the character of the questions which

must be resolved, shall be passed by the court in the conference chamber and shall be issued in the form of separate documents signed by all members of the court. Rulings involving the return of cases for supplementary investigation and the dismissal of proceedings on a case shall be rendered according to the same procedure.

All other rulings, such as those involving the question of rescheduling the calendar of judicial sessions, procedure for questioning persons committed for trial and witnesses, the summoning of additional witnesses when this question is decided in the affirmitive, etc., may, at the discretion of the court and in accordance with the circumstances of the case, be rendered either by the aforeindicated procedure or by conferring on the bench without retiring to the conference chamber, and not in the form of a separate document but by entry in the record of the judicial session; in the latter case the signatures of the entire court shall not be required on the record.

(3) Rulings in accordance with the procedure prescribed by Section 462 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics shall be rendered by the members of the court in the conference chamber and shall be issued in a special document signed by the members of the court. (Resolution of the Plenary Session of the Supreme Court USSR of 15 April 1943, No 8/M/3/V)

Annotation on Section 96

1. (3) Pretrial investigations shall be obligatory for all cases involving those crimes covered by the ukases of 4 June 1947.

These cases shall be submitted to court by a prosecutor. (Resolution of the Plenary Session of the Supreme Court USSR of 22 August 1947, No 12/6/V)

2. The investigation of cases involving malicious evasion by gypsies of socially useful labor and involving vagrancy shall be conducted by militia agencies in accordance with currently effective union-republic criminal procedural codes. (Extract from the ukase of the Presidium, Supreme Soviet USSR, of 5 October 1956, Vedomosti Verkhovnogo Soveta SSSR 1956, Law No 150)

Annotation on Section 108

1. (2) Oblast, kray, and supreme courts shall accept for trial cases involving accusations against chairmen of collective farms of breaches of official duty only when the pretrial investigation of these cases is conducted by pretrial investigators of the office of the prosecutor and the bill of charges has been approved by the prosecutor of the oblast, kray, or republic.

When these requirements are not met, the case shall not be subject to trial in court and should be submitted to the appropriate prosecutor for the fulfillment of these requirements. (Decree of the Plenary Session of the Supreme Court USSR of 22 August 1947, No 12/5/V)

Annotation on Section 121

1. A list of the types of property which cannot be proceeded against by acts of execution or similar documents was approved by the decree of the Council of Ministers RSFSR of 28 July 1947 (RSFSR Laws 1947, Law No 33).

Annotation on Section 121-a

1. See Section 4 of annotation on Section 454.

Annotation on Section 203

1. (1) The following may be applied as measures of a medical nature with regard to mentally ill persons who have committed crimes:

a. Compulsory medical treatment in general psychoneurological and psychiatric curative institutions;

b. Compulsory medical treatment in special psychiatric institutions;

c. Treatment in a psychoneurological hospital or a psychiatric colony on a general basis;

d. Release to the care of relatives or guardians while concurrently under medical observation.

(2) The measures of a medical nature cited in Section 1 shall be imposed only on the basis of a forensic expert psychiatric medical examination conducted in accordance with the "Instruction on the Conduct of Forensic Expert Psychiatric Examinations in the USSR" of 31 May 1954.

(3) The measures of a medical nature specified in Section 1 may be applied with regard to the following:

a. Persons who have committed a crime while in a state of chronic mental illness or of temporary mental derangement and who are considered not imputable;

b. Persons who have committed a crime in a condition of imputability but have developed a chronic mental illness before passage of sentence;

c. Persons who have developed a chronic mental illness while serving a sentence in a place of confinement.

(4) Persons specified in Section 3 of this instruction who, because of the nature of the acts committed by them or because of their mental condition, constitute a danger to society shall be subject to compulsory medical treatment.

(5) Compulsory medical treatment shall be imposed by the courts on persons who commit socially dangerous acts while not in an imputable condition, and on persons who commit crimes while mentally balanced but who develop a chronic mental illness before passage of the sentence.

Rulings regarding the imposition of compulsory medical treatment on these persons shall be rendered in judicial session with the participation of a prosecutor and a lawyer on the basis of an expert psychiatric opinion, of decision of the question as to whether these or other socially dangerous acts were actually committed by them, and of decision of the question as to the degree of danger to society they constitute.

The question of transferring for compulsory medical treatment persons who become mentally ill in a place of confinement and who are subject to release from completion of sentence as a result of that illness shall also be decided by the courts in judicial session with the participation of a prosecutor and a lawyer.

(6) In imposing compulsory medical treatment, the courts shall issue a ruling releasing such persons from custody (if they are in custody) without establishing a time limit for compulsory treatment.

(7) In considering data concerning persons who have committed socially dangerous acts in an unimputable condition, and concerning persons who committed crimes while mentally balanced but developed a chronic mental illness before the trial, the courts shall decide the question of applying one of the clauses of Section 1 of this instruction, acting on the basis of expert forensic psychiatric opinion and with regard to the degree of danger to society these persons constitute.

Persons subjected to criminal prosecution for especially dangerous crimes, such as counterrevolutionary crimes, banditry, robbery with assault, murder, infliction of serious bodily injury, and rape, and who are deemed not imputable or who develop a chronic mental illness before trial or while serving a sentence for these crimes shall, if they constitute a substantial public danger by reason of their mental condition, as determined by the court on the basis of forensic expert psychiatric opinion and the materials of the case, be subjected to compulsory medical treatment in special psychiatric institutions.

Note. In exceptional cases, mentally ill persons who have committed other crimes may be subjected to compulsory medical treatment in special psychiatric hospitals if their mental condition renders them a special danger to society.

Other persons who are subjected to criminal prosecution for or convicted of other crimes, and who because of mental illness constitute a danger to society, shall be subjected to compulsory medical treatment in general psychoneurological curative institutions and relieved of further punishment or confinement.

(8) Court rulings requiring compulsory medical treatment shall be executed with regard to persons in places of confinement by the staffs and facilities of those institutions and, with regard to all other persons, by public health agencies with the cooperation, when necessary, of militia agencies.

(9) The question of selecting a general psychoneurological or psychiatric curative institution to which, in accordance with a court ruling, a mentally ill person is to be committed, shall be resolved by public health agencies. In committing a mentally ill person to a psychoneurological or psychiatric curative institution, copies of the court ruling and of the expert forensic psychiatric opinion shall be forwarded at the same time to the institution. In the presence of these documents and of the orders of the public health agencies, such persons shall be admitted to psychoneurological or psychiatric curative institutions unconditionally.

(10) Public health agencies shall be responsible for the conduct of compulsory medical treatment pursuant to court rulings in general psychoneurological hospitals.

(11) Compulsory medical treatment in special psychiatric hospitals shall be the responsibility of organs of the Ministry of Internal Affairs with the assistance of public health agencies.

(12) In conducting compulsory medical treatment pursuant to court rulings, psychiatric and psychoneurological institutions shall observe such conditions as to ensure the necessary treatment of and service to the mentally ill while preventing escape and other excesses by the latter.

(13) Mentally ill persons committed for compulsory medical treatment may be transferred from one psychoneurological or psychiatric institution to another by the administration of the institution with the permission of higher public health agencies.

(14) Mentally ill persons committed for compulsory medical treatment may in exceptional cases, be allowed by the hospital administration to go outside the hospital under supervision.

(15) If a patient committed for compulsory treatment escapes, the chief physician of the hospital or his authorized deputy shall immediately notify the investigative agencies and the prosecutor of the rayon in which the hospital is located so that an investigation may be made and steps taken to return the fugitive to the hospital.

(16) If doubt arises concerning the actual mental illness of a person committed for compulsory medical treatment, or doubt that he was not imputable at the time the crime was committed, the hospital administration shall appoint a medical commission to investigate. If the commission's opinion confirms the doubt, it shall be submitted to the prosecutor of the oblast in which the hospital is located so that the necessary steps may be taken.

(17) All patients in psychoneurological or psychiatric hospitals under compulsory treatment shall be re-examined at intervals of 6 months by a medical commission to determine their condition and the possibility of raising the question of revising the form of compulsory medical treatment (transfer from a special psychiatric institution to a general one) or of terminating it by transferring the patient to treatment on a general basis or releasing him to the care of relatives with concurrent medical observation.

(18) Compulsory medical treatment may be terminated, or its form changed, upon the recommendation of the administration of a psychoneurological or psychiatric hospital by the court which imposed compulsory medical treatment or by another court of the same category at the place where the psychiatric or psychoneurological institution is located.

(19) The questions of terminating compulsory medical treatment or of altering its form shall be considered by a court in judicial session with the participation of the prosecutor and a lawyer within 10 days from the time a recommendation to that effect is received from the psychiatric (psychoneurological) institution.

(20) The following shall constitute grounds for raising the question of terminating compulsory medical treatment or changing its form: recovery of the patient or a change in his mental condition which make him no longer dangerous to society or alter the degree of that danger.

(21) The opinion of an expert psychiatric commission of the hospital, organized in accordance with Section 25 of the "Instruction on the Conduct of Forensic Expert Psychiatric Examinations in the USSR" of 31 May 1954, shall be necessary to raise in court the question of terminating compulsory medical treatment or altering its form.

(22) An opinion on the possibility of terminating compulsory medical treatment and, when necessary, an indication of further measures recommended with regard to the person examined, shall be set forth in the form of an official certification signed by all members of the commission.

(23) In ruling to terminate compulsory medical treatment as a result of the recovery of a person who became mentally ill after committing a crime, the courts shall at the same time rule on the following matters:

a. On reopening judicial proceedings, if the person became ill after the case was submitted to court but before the sentence was passed or before it became final and executive;

b. On renewing execution of the sentence, if the illness occurred during its execution or after it became final and executive, in which case the time of compulsory medical treatment shall be reckoned as a part of the term of punishment (Section 457 of the RSFSR Criminal Procedural Code and corresponding sections of the criminal procedural codes of other union republics);

c. On submitting the case to a prosecutor's office, if proceedings were suspended before the case was brought to court.

(24) In issuing rulings terminating compulsory medical treatment of persons who committed crimes in an imputable condition and then developed a chronic mental illness but no longer need to be confined to a hospital, when grounds for such action exist the courts shall simultaneously either dismiss the criminal case or relieve the person of the punishment imposed in the sentence, unless this question was settled by the court at the time it imposed compulsory medical treatment.

(25) Prosecution agencies shall supervise the legality and the execution of court rulings requiring compulsory medical treatment.

Public health agencies shall supervise the timely and correct conduct of compulsory medical treatment.

(26) Persons who suffer temporary mental derangement during proceedings on their case and who are committed by order of the investigative agencies or the court for treatment shall be kept on a probationary basis as follows: persons under prosecution for especially dangerous crimes shall be kept in special psychiatric hospitals; persons under prosecution for other crimes shall be kept in general psychoneurological or psychiatric hospitals if they are not being held in custody or if the court or investigative agency considers it possible to free them from custody for the period of their stay in the hospital.

(27) Persons who suffer temporary mental derangement after passage of a sentence to confinement and while the sentence is being served shall be held for treatment in a psychiatric hospital at the place of confinement, to which they shall be committed by the administration of the place of confinement.

(28) Persons referred to in Section 26 who were being held in custody before they became ill shall, after recovery, be returned to the place of confinement by the forces and facilities of the Ministry of Internal Affairs.

(29) If a court considers it unnecessary to apply compulsory punishment to a mentally ill person who has committed a crime and been declared not imputable, in dismissing the case the court shall rule either that the ill person be committed to a psychoneurological or psychiatric institution for treatment on a general basis or that he be entrusted to the care of relatives (or guardians) under concurrent medical observation. (Extracts from the instruction of the Ministry of Health USSR of 31 July 1954 "On Procedure for Applying Compulsory Medical Treatment and Other Measures of a Medical Nature in Regard to Mentally Ill Persons Who Have Committed Crimes")

Annotation on Section 236

1. (1) Before the dates for hearing criminal cases in judicial session are set, all cases which are received from a prosecutor with bills of charges shall be subject to obligatory preliminary consideration in preparatory executive session.

(2) Preparatory executive sessions shall consider the following questions with regard to each accused person:

a. Whether or not the criteria of a crime are present in the acts of the accused and whether or not it is possible to dismiss the case in accordance with Section 238 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics;

b. Whether or not the pretrial investigation is complete;

c. Whether or not the charges preferred are adequate and well-founded;

d. Whether or not the charges preferred are correctly qualified.;

e. Whether or not the requirements of the Criminal Procedural Code have been observed in the pretrial investigation, particularly those procedural rules which must be followed if a case is to be scheduled for hearing (preferring of charges, compliance with Section 206 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics, etc.);

f. Motions of accused persons (that documents be admitted, that additional witnesses and experts be called in, etc);

g. Whether or not to permit the participation of the parties;

h. The list of persons to be summoned to the judicial session (witnesses, expert witnesses, etc.);

i. Whether or not the measure to prevent evasion of justice which has been chosen is correct, especially if it involves keeping a person in custody;

j. The time and place of the judicial session;

k. The procedure for hearing the case (open or closed judicial session, etc.).

(3) In exceptional cases accused persons may be summoned to preparatory executive sessions when the circumstances of the case make it necessary to meet the defendant personally or to clarify concrete questions connected with decisions on motions filed by accused persons.

If the appearance of the accused at a preparatory executive session is considered necessary and the case involves minors, deaf persons, mutes, or in general persons whose physical defects make them incapable of comprehending the proceedings, the court must permit a representative of the accused to participate in the preparatory executive session. Witnesses and expert witnesses shall not be summoned to preparatory executive sessions.

(4) If the prosecutor does not appear at a preparatory executive session, the case may be considered on the basis of a judge's report; the prosecutor's failure to appear shall be noted in the record of the preparatory executive session and the prosecutor superior to him shall be notified of the fact. (Excerpt from the resolution of the 54th Plenary Session of the Supreme Court USSR of 29 March 1936)

2. See Subsection 2, Section 1 of the annotation on Sections 326 -- 329.

Annotation on Section 237

1. Preparatory executive sessions in all courts (except people's courts) shall be conducted by the panel of judges provided for by Section 237 of the RSFSR Criminal Procedural Code and by corresponding sections of criminal procedural codes of other union republics.

Only when the absence of the requisite number of members of the court (because of illness, vacation, or other reasons) makes it impossible to hold a preparatory executive session with three members of the court shall the session be conducted, in accordance with Section 19 of the "Law on the Judicial System," by a presiding judge -- the chairman or a member of the given court -- and two people's assessors. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 15 September 1950, No 16/14/V)

2. Section 15 of the "Law on the Judicial System" contains nothing permitting the appeal of all court rulings without exception. This section of the law provides that rulings by all courts, except those of the Supreme Court USSR and the supreme courts of union republics, may be appealed to higher courts under the procedure established by law. The conclusion follows that the provisions of union-republic civil procedural codes and criminal procedural codes which limit appeals of certain court rulings (Sections 52-a, 127, 182, 233, 234, and 267 of the RSFSR Civil Procedural Code and Sections 237, 347, and 348 of the RSFSR Criminal Code, and corresponding sections of civil and criminal procedural codes of other union republics), insofar as the limitations are established by law, are not in contradiction to the "Law on the Judicial System" and therefore must be implemented. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 3 July 1940, No 20/11/V)

Annotation on Section 239

1.(2) When an appointed defense counsel participates in a trial, in rendering the sentence the court shall indicate in it whether the convicted person is required to furnish reimbursement for the counsel's fee or whether the convicted person is relieved of payment of these expenses. In determining the amount of the fee paid the counsel, the court shall be guided by the rates fixed** for payments to members of collegiums of defense counsels.*** Expenses for defense by appointed counsel shall be awarded to the given collegium of defense counsels which shall pay for the defense counsel's work in conducting the defense. (Extract from the order of the People's Commissariat of Justice USSR of 27 February 1938, No 19)

**See the instruction of the People's Commissariat of Justice USSR of 2 October 1939 "On Procedure for Payment of Legal Services Rendered by Lawyers to the Public," supplemented by the order of the Ministry of Justice USSR of 4 October 1955, No 50, and the letter of the Ministry of Justice USSR of 22 September 1953, No P-70.

***Lawyers.

2. Contrary to the procedure established in Section 2 of the order of the People's Commissariat of Justice USSR No 19 of 27 February 1938, in the future the fee paid lawyers appointed under Section 55 of the RSFSR Criminal Procedural Code and under corresponding sections of criminal procedural codes of other union republics shall not be noted in the sentence, but in a special court ruling which shall serve as the basis for recovering the amount awarded regardless of the future disposition of the sentence in the case. (Extract from the letter of the Ministry of Justice USSR No P-39 of 16 June 1953)

3. Courts may relieve convicted persons of payment for legal services rendered them only in individual cases when it considers such relief necessary as a result of the financial condition of the convicted person. (Extract from the order of the Commissariat of Justice USSR of 15 December 1943, No 88)

4. In accordance with Order No 19 of the People's Commissariat of Justice USSR of 27 February 1938 and Order No 88 of 15 December 1943, courts are also obligated to award fees to lawyers for their services under the procedure provided for by Section 55 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics when rendering sentences of acquittal. (Extract from the letter of the Ministry of Justice USSR No D-36 of 31 May 1950)

Annotation on Section 247

Sections 28, 37, 44, 52, and 62 of the "Law on the Judicial System" set out detailed instructions regarding the precise questions which a judge, acting alone, shall decide and issue orders upon in preparing a case for hearing. Accordingly, it must be recognized that Sections 94, 95, 96, 233, 239, 247 (except for Subsection 4), and 250 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics, which contain a list of questions judges acting alone are permitted to settle analogous to the questions covered by the cited sections of the "Law on the Judicial System," do not contradict the latter and the courts shall be guided by them. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 3 July 1940, No 20/10/V)

Annotation on Section 253

1. Courts shall not have the right to refuse to summon to judicial session witnesses included on the list attached to the bill of charges or named in supplementary motions of the parties, if the latter cite concrete facts and data which clarify the case and which can be corroborated by the witnesses whom they wish to call. (Extract from the resolution of the 47th Plenary Session of the Supreme Court USSR of 7 June 1934)

Annotation on Section 257

1. The presiding judge shall in each individual instance ensure that the record is kept by a person sufficiently qualified for the task, must see to it during the trial itself that entries in the record of all explanations and testimony of persons questioned are complete and correct, must verify and correct the record promptly, must in no case permit the sort of record-keeping and technical performance which makes subsequent reading and use impossible or difficult, and must certify the record by his signature after a careful verification of its correctness, preciseness, and completeness.

The presiding judge shall also be responsible for ensuring that the procedure established by law for receiving and considering the notations of the parties on the record is observed, since it is an important procedural guarantee that the court will respect their rights and interests. (Extract from the resolution of the 47th Plenary Session of the Supreme Court USSR of 7 June 1934)

Annotation on Section 312

1.(5) If, during the hearing of any case, circumstances come to light which tend to show instances of accepting or offering bribes or of acting as an intermediary in bribery on the part of a person committed for trial against whom these crimes have not been charged, or on the part of other persons not under prosecution in the given case, the court shall not ignore these circumstances but shall issue appropriate rulings, being guided by Sections 312, 315, and 316 of the RSFSR Criminal Procedural Code and by corresponding sections of criminal procedural codes of other union republics. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 24 June 1949, No 7/2/V)

Annotation on Section 315

1. See Section 1 of annotation on Section 312.

Annotation on Section 316

1. See Section 1 of annotation on Section 312.

Annotation on Chapter XXIV

1. (4) In strict accord with Section 24 of the "Fundamentals of Criminal Jurisprudence of the USSR and of the Union Republics," court sentences shall be clearly expressed, with the necessary detail and proof, which requires the following:

a. Refraining from incorporating into the sentence any sort of abstract or particularly extensive discussion of general political topics, bearing in mind that the political significance of a sentence consists in the correct resolution of the case on the basis of the facts established by the hearing of evidence;

b. Inclusion of concrete and well-founded conclusions reached by the court on the merits of the given case, both on the case as a whole and in regard to each person found guilty by the court;

c. Strict observance of the requirements of the Criminal Procedural Code on the posing of questions in the conference chamber on the content of the sentence (Section 320 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics).

In trying each case it is necessary not only to establish the liability to punishment of the given persons, but also to seek out the flaws and defects in organization and management which created the conditions favorable to the crime. It is necessary to issue special rulings in regard to flaws and defects found, to send these to the appropriate party and state agencies, and periodically to check on the results of such communications. (Extract from the resolution of the 47th Plenary Session of the Supreme Court USSR of 7 June 1934, edition of 4 December 1953)

2. (1) In rendering sentences the courts shall bear in mind their great significance as acts of socialist justice which require of the judges an awareness of their special responsibility for the correct political content, legality, and well-foundedness of sentences.

(2) Each sentence shall contain concrete answers to the questions which the court is bound to decide in rendering a sentence in accordance with Section 320 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics.

In accordance with the indicated sections of criminal procedural codes, sentences shall contain answers to the following questions: whether the act or omission attributed to the person committed for trial did in fact occur, whether it contains the criteria of a crime, whether it was committed by the person committed for trial, whether he is subject to punishment for the act, and to precisely what punishment. Questions connected with civil suits [in criminal proceedings], physical evidence, and court costs shall also be decided in sentences.

(3) In rendering sentences the courts shall strictly observe the requirements set forth in Section 334 of the RSFSR Criminal Procedural Code and in corresponding sections of criminal procedural codes of other union republics.

In so doing, if the person committed for trial is pronounced guilty, the sentence shall contain concrete statements of precisely what criminal offenses were committed by the person committed for trial, the time, place, and means of committing the crime, and all other circumstances which have a bearing on the commission of the crime.

When several persons are committed for trial in a single case and are being prosecuted on different charges, all the information set forth above shall be given in the sentence with regard to each of the persons committed for trial.

(4) In accordance with Section 23 of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union Republics," sentences shall be based on the evidence heard in judicial session. Therefore information from the pretrial investigation shall be heard and verified by the court during the hearing of evidence and sentences shall be based only on such evidence.

Taking note of the fact that the criminal procedural codes of certain union republics grant courts the right to base sentences also on information found in the case but not heard in judicial session (Section 396 of the RSFSR Criminal Procedural Code, in regard to oblast and equivalent courts, Section 296 of the Criminal Procedural Code of the Ukrainian SSR, etc.), courts shall note that in view of Section 20 of the USSR Constitution they must be guided strictly by Section 23 of the "Fundamentals of Criminal Jurisprudence," and must not tolerate the deviations provided for by the cited sections of union-republic criminal procedural codes.

(5) Sentences shall indicate the grounds on which courts convict or acquit each person committed for trial.

The evidence upon which the court bases its conviction or acquittal shall be indicated concretely in sentences and the reasons for crediting this evidence shall be cited. If certain evidence in a case was not credited and would have supported the conviction or acquittal of the person committed for trial, the court shall indicate in the sentence precisely why such evidence was not credited.

Thus, in rendering sentences of conviction, the courts shall point out in the sentence why the defendant's explanations in his defense and other evidence tending to acquit him were not credited. In rendering a sentence of acquittal, the circumstances refuting the conclusions of the bill of charges shall be set forth and the evidence on which the sentence is based shall be indicated.

(6) Courts are advised of the necessity of grounding sentences juridically with reference to the appropriate criminal and criminal procedural laws.

In so doing, particular attention shall be paid to the qualification of the crime, and the sentence shall indicate the grounds for applying the section of the Criminal Code or other criminal law in question.

(7) In reviewing cases under appellate procedure or under ex officio review procedure, courts shall pay special attention to the conformity of sentences with the requirements of the law, taking into account the provisions of this resolution, and shall take steps to correct errors committed by lower courts by overruling or modifying sentences passed in violation of the law, which rulings shall point out the violations committed by the courts.

When violations committed by courts do not require that sentences be overruled (Sections 416, 419, 419-a, and 439 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics), higher courts shall point out to lower courts in interlocutory orders the errors committed by them in rendering sentences.

The Plenary Session of the USSR Supreme Court deems it essential to emphasize that the supreme courts of the union republics, to which the constitutions of the union republics and Section 45 of the "Law on the Judicial System" entrust supervision over the judicial activity of all union-republic courts, are particularly responsible for ensuring the legality and well-foundedness of sentences passed by courts of original jurisdiction. (Resolution of the Plenary Session of the Supreme Court USSR of 28 July 1950, No 13/9/V)

Annotation on Section 320

1. See Section 4 of the annotation on Section 454.

Annotation on Sections 326--329

1. (1) In trying criminal cases the courts shall give particular attention to civil actions in connection therewith, bearing in mind their great significance as a means of protecting the property interests of state and public institutions, enterprises, and organizations which have suffered losses as the result of crimes, and the property rights of individual citizens.

Civil suits accepted for hearing jointly with criminal cases shall, as a rule, receive final determination at the same time as the criminal case.

Bearing in mind that the extent of material damage inflicted often determines the qualifications of crimes and the degree of punishment, transfer of civil suits for judgment of the amount of compensation under civil procedure, in accordance with Section 329 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics, shall be permitted only as a special exception.

(2) In considering a case in preparatory executive session, courts shall determine whether the crime inflicted material damage, whether a civil suit was instituted by the injured party, whether evidence was offered to support the suit, whether measures were taken to assure satisfaction of the suit, and whether the civil plaintiff is listed among the persons subject to summons to judicial session. If, despite information in the case concerning damage inflicted by the crime, the investigative agencies have not taken the proper steps to assure satisfaction of the civil suit filed, the court shall resolve on its own initiative that such measures be taken.

With regard to cases involving plundering or shortages of state or public property respecting which a civil suit was not filed during the pretrial investigation, courts shall notify the interested institutions, enterprises, or organizations that a case has been accepted for trial in order that the latter will be able to file civil suit. If the investigative agencies have not taken steps to assure satisfaction of a civil suit filed in this type of case during the pretrial investigation, a court shall either return the case to the prosecutor or itself take steps to assure the suit, if such measures have not already been embraced in the conduct of investigative actions.

(4) Persons who inflict damage by joint offenses shall bear joint liability. It is impermissible to impose joint liability on persons convicted in a single case, but for separate crimes not connected by common intent, or upon persons, some of whom, for example, are convicted of plundering and others of neglect of duty or abuses without material gain, even though the offenses of the latter may, in some way, have objectively assisted the former to commit acts of plunder.

In group crimes each convicted person shall bear joint liability only for those episodes of the crime in which he is found to have participated.

When a person committed for trial has inflicted damage by his criminal offenses and was intentionally abetted therein by other persons committed for trial, the latter shall bear joint liability with the person who inflicted the damage for that portion which they abetted.

In granting a civil suit against several convicted persons, a court shall specify precisely in the sentence whether it is imposing joint or several liability on the convicted persons -- and, if so, on which of them -- and in the latter case, exactly what amount each of the defendants shall pay to the injured party.

(5) In rendering a sentence of acquittal because the occurrence of the crime has not been proved or because the evidence supporting the charges is insufficient, the courts shall deny the civil suit against the person committed for trial in accordance with Section 327 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics.

If acquittal is based on the absence of the criteria of a crime in the acts of the persons committed for trial, the court shall not adjudicate a civil suit. In like manner, a civil suit shall also not be adjudicated when a case is dismissed because of the death of the person committed for trial, because of an act of amnesty on the basis of Section 8 and the Note to Section 6 of the RSFSR Criminal Code and corresponding sections of criminal codes and criminal procedural codes of other union republics, or when the person committed for trial is not imputable (Section 322 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics).

In all these instances the injured party shall have the right to file suit against the person committed for trial under the rules of civil procedure.

When courts, on trying a case in judicial session, find the person committed for trial guilty but relieve him of punishment under Subsection 2, Section 326 of the RSFSR Criminal Procedural Code or under corresponding sections of the criminal procedural codes of other union republics, the civil suit shall be decided as if a sentence of conviction had been pronounced.

The procedure established by Section 327 of the RSFSR Criminal Procedural Code and by corresponding sections of criminal procedural codes of other union republics shall also be applied in reviewing cases under appellate and ex officio review procedure.

In overruling a sentence and remanding the case for a new trial with regard to certain convicted persons and affirming the sentence with regard to others who share with the first joint liability for damages, the part of the sentence dealing with the civil suit shall be subject to reversal and remanding for a new trial with regard to all the convicted persons declared by the sentence to be joint defendants.

If modification of a sentence alters the grounds of liability for damages, the higher court, in the light of the circumstances of the case, shall either modify that part of the sentence which deals with the civil suit or shall overrule that part of the sentence and remand the civil suit for a new trial under the rules of civil procedure.

(6) In rendering a sentence of conviction, a court shall, on the basis of a careful analysis of the circumstances of the case, examine the grounds for any civil suit which was filed and, whether it is granted or denied, shall cite in the sentence the reasons for its conclusions on the civil suit, the evidence on the basis of which the court considers the suit proved or not proved, and the law in accordance with which the civil suit is decided.

(9) The part of a court sentence relating to a civil suit may be declared subject to execution within the time limits established in the civil procedural codes of the union republics for the execution of judgments in civil cases. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 28 May 1954, No 6)

Annotation on Section 334

1. See Sections 1 and 2 of annotation on Chapter XXIV.

Annotation on Section 341

1. In all cases involving the confinement of persons who are parents of minors, the prosecutor, when it is a matter of taking the person into custody as a measure to prevent evasion of justice, or the judge, when it is a matter of pronouncing a sentence imposing confinement or imprisonment, shall give special consideration to the situation of the children after the arrest or conviction of the parent in order that no minor shall be left without supervision. A special resolution or ruling shall be issued on the question, indicating what measures are to be taken with regard to children left without supervision, in accordance with the decree of the Central Committee of the All-Union Communist Party and the Sovnarkom USSR of 31 May 1935 (placement of children in a juvenile institution, appointment of guardians, etc.). This decree shall be carried out by the proper agencies (departments of public education, village soviets, etc.), and such children shall be given an education at the proper time. (Circular of the People's Commissariat of Justice USSR and the Office of the Prosecutor USSR of 3 September 1936, No 4/56)

Annotation on Section 347

1. See Section 2 of annotation on Section 237.

Annotation on Section 348

1. See Section 2 of annotation on Section 237.

Annotation on Section 349

1. (1) Plaintiffs seeking damages in criminal proceedings shall have no right to appeal sentences of acquittal, except when, as injured parties, they are granted by law the right to conduct the prosecution in court, provided that a prosecutor did not enter the case.

(2) When a sentence of acquittal is pronounced, such plaintiffs may file appeals only with regard to that part of the sentence which involves the court's decision on the civil suit and shall not touch on the question of overruling the sentence of acquittal. However, such appeals may touch on the grounds for the sentence of acquittal which affected the suit and on denials of suits when the court is prohibited by law from entertaining the action (Section 327 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics). (Resolution of the Plenary Session of the Supreme Court USSR of 22 May 1941, No 20/7/V)

2. See Section 1 of annotation on Subdivision 1 of Chapter XXIX (Sections 409--426).

Annotation on Section 389

[Comment: Rescinded by the ukase of the Presidium, Supreme Soviet RSFSR, of 31 January 1958. Vedomosti Verkhovnogo Soveta SSSR 1958, Law No 81]

1. In the operation of the military tribunals of the Red Army, a question has arisen concerning the procedure, in trying criminal cases, for compensating material damage inflicted on state, cooperative, or public organizations.

In view of this, the Plenary Session of the USSR Supreme Court has resolved to issue the following instructions to the courts:

In accordance with legislation in force, in trying criminal cases military tribunals shall accept and adjudicate civil suits filed only by military units.

As for criminal cases involving damage inflicted on nonmilitary state, cooperative, and public organizations, military tribunals shall refer the question of compensating material damage, whether or not a suit has been filed, to the appropriate court of general jurisdiction under the rules of civil procedure.

In so doing, military tribunals shall take steps to ensure compensation for damages by attaching the property of the convicted person, if this was not done before the trial. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 6 April 1945, No 6/Z/V)

Annotation on Section 396

1. See Section 2 of commentary on Chapter XXIV.

Annotation on Section 405

1. The rulings of oblast, kray, okrug, and autonomous-oblast courts and supreme courts of autonomous republics specified in Clause c, Section 249 of the RSFSR Civil Procedural Code, Section 332 of the Civil Procedural Code of the Turkmen SSR, Section 405 of the RSFSR Criminal Procedural Code, and corresponding sections of the codes of other union republics, may be appealed or protested only to the supreme court of the union republic in question. (Resolution of the Plenary Session of the Supreme Court USSR of 13 June 1939)

Annotation on Subdivision 1 of Chapter XXIX (Sections 409-426)

1. (1) The attention of the courts is directed to the fact that verifying the legality and grounds of sentences is of the greatest political significance in ensuring the proper administration of Soviet justice by courts of original jurisdiction, and that this task imposes a great responsibility on the higher courts, requiring them to pass on every case correct rulings which are based on the law and which explain the reasons for the ruling.

(2) The courts are reminded of the necessity of the most careful and thoughtful approach to appeals and protests seeking modification or quashing of judgments, in connection with which cases being reviewed on appeal shall be carefully studied and analyzed, and all the materials of the case shall be, compared with all the arguments set forth in the appeal (protest), so that not a single argument shall be left unanswered in the ruling.

Moreover, in accordance with Section 412 of the RSFSR Criminal Procedural Code and the corresponding sections of criminal procedural codes of other union republics, the courts must, under ex officio review procedure, verify all the proceedings on the case and make the necessary decisions.

(3) Higher courts shall be more exacting toward courts of original jurisdiction with regard to strict observance of socialist legality in trying cases. In connection with this, when considering appeals, courts shall verify whether the law was applied correctly and whether all the required procedural norms were observed.

When necessary, the higher courts shall point out errors of law to lower courts through interlocutory orders.

(4) Appellate rulings shall contain a brief summary of the sentence and a summary of the arguments raised on the appeal or protest.

If the sentence is affirmed, the court ruling shall indicate what concrete facts led to the rejection of the arguments raised on the appeal or protest, making reference to the corresponding material in the case.

If a sentence is overruled or modified, the court shall point out in its ruling wherein the sentence was erroneous, what laws were violated in the case, precisely what was affected by the violation, and wherein the reasons cited by the court for the sentence are erroneous.

In particular, when reducing punishment, the courts shall state in their rulings the reasons justifying such reduction, basing themselves on the circumstances of the case, the public danger constituted by the crime, and the personality of the convicted person (Section 45 of the RSFSR Criminal Code and corresponding sections of criminal codes of other union republics).

If a sentence is reversed and the case remanded for a new trial, the ruling shall point out what circumstances in the case were not elucidated, why and as a result of what errors in the pretrial investigation or hearing of evidence they must be elucidated, and what further investigative actions must be conducted in the case.

The conclusions in the ruling must contain references to the appropriate substantive or procedural law.

If a conviction or acquittal is unfounded because of a careless and inattentive attitude toward the trial of the case, in overruling the sentence the higher court shall issue appropriate instructions to the court of original jurisdiction by interlocutory order and when necessary notify the appropriate agencies of this fact so that the question of taking disciplinary action may be decided.

(5) The courts shall note that, in accordance with Section 26 of the "Fundamentals of Criminal Jurisprudence in the USSR and in Union Republics," in considering the appeal of a convicted person seeking quashing of the judgment, when no protest is entered by the prosecutor they shall not have the right to overrule the sentence and remand the case for retrial on grounds of the leniency of the punishment or the necessity of applying a law requiring heavier punishment.**

**See Section 2, below.

(6) It should be noted by the courts that the provisions of Section 349 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics concerning the impermissibility of touching on the substance of cases upon appeals shall not be applied since it contradicts Section 15 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics."

In connection with this the attention of the courts is directed to the fact that in considering appeals of cases they are obligated to review, compare, and evaluate all the evidence in the case in order to decide the question of the extent to which the lower court's conclusions were based on the materials of the case.

In so doing, courts shall take the following into consideration: (a) that they do not have the right to establish, and consider proved, facts which are not cited in the sentence or which are rejected by it, and that when grounds for such action are present, in these cases they shall remand the case for a new trial; (b) that, in rejecting the conclusions of a court and in remanding a case for a new trial, they are obligated to point out precisely why the court's conclusions are defective and what circumstances were not taken into account by the court, but they shall not have the right to indicate that certain evidence should take precedence; (c) that, in remanding a case for a new trial, they shall not have the right to prejudge the case on the question of whether the charges are proved or not.

(7) The attention of chairmen of kray, oblast, and equivalent courts and of union and autonomous republic supreme courts is directed to the fact that they bear responsibility for establishing procedure for reviewing appeals and protests seeking modification or quashing of judgments, in complete conformity with the law (Sections 409, 410, 435, and 436 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics).

In particular, in union republics where the law so provides, a strict and undeviating observance of procedure involving the summoning of the parties to be present during the review of cases under appellate procedure must be ensured.

When a protest seeking modification or quashing of a judgment is filed, the court shall notify the person committed for trial of that fact and explain to him that he has the right to file a written objection to the protest.

When an appellate ruling is overruled under ex officio review procedure and the case remanded for a new appellate review, the court which reviews the appeal for the second time (including union-republic supreme courts) shall notify the person committed for trial of that fact to enable him or his counsel to take part in the review of the case.

(8) Supreme courts of union republics are advised that, in considering cases under ex officio review procedure,** they must give most serious attention to the question of whether all the requirements of the law were observed during the consideration of the case under appellate procedure and thereby ensure strict observance of legality by lower courts. (Resolution of the Plenary Session of the Supreme Court USSR of 1 December 1950, No 17/15/V)

**See the ukases of the Presidium, Supreme Soviet USSR, of 14 August 1954 "On the Formation of Presidiums in Supreme Courts of Union and Autonomous Republics, in Kray and Oblast Courts, and in Courts of Autonomous Oblasts" and of 25 April 1955 "Procedure for the Review of Cases by Presidiums of Courts," pp 118-121.

2. In accordance with Section 26 of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union Republics," it has been established that when a court reviews on the merits a case submitted to it under appellate procedure, it may increase the severity of the measures of criminal punishment imposed in consequence of the first hearing only in the event that the sentence has been protested by a prosecutor's office.

Taking into account the fact that Subparagraph 5, Paragraph 2 of the resolution of the Plenary Session of the Supreme Court USSR of 1 December 1950, "On Eliminating Shortcomings in the Work of Courts in Reviewing Criminal Cases Under Appellate Procedure," conflicts with Section 26 of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union Republics," the Plenary Session of the Supreme Court resolves:

Subparagraph 5, Paragraph 2 of the aforementioned resolution of the Plenary Session of the Supreme Court USSR of 1 December 1950 stands rescinded. (Resolution of the Plenary Session of the Supreme Court USSR of 10 April 1957, No 4)

Annotation on Section 411

1. In order to ensure that all appeals and protests on a case seeking modification or quashing of the judgment are considered concurrently, the court which tried the case shall submit appeals and protests filed with it to a higher court only after the time limit established by law for appealing or protesting sentences or decisions has expired. Earlier submission shall be permitted only when both the prosecutor's protest and appeals from all the other parties participating in the case have been received prior to the expiration of the time limit.

In like manner, higher courts shall not review cases under appellate procedure prior to the expiration of the time limit for filing appeals and protests.

If, for any reason, appeals from certain parties which are filed within the established period arrive after the case has been reviewed in regard to other parties or when the time limit for appeals has been extended in accordance with Sections 345 and 400 of the RSFSR Criminal Procedural Code, Section 62 of the RSFSR Civil Procedural Code, and corresponding sections of criminal and civil procedural codes of other union republics, the higher court must accept such appeals for consideration.

In these cases, if the higher court in considering such an appeal concludes that its ruling on the appeal requires the modification or reversal of a previous ruling, the higher court, on rendering the ruling, shall, as appropriate, submit the case with a separate recommendation to the chairman of the union-republic supreme court or to the Chairman of the Supreme Court USSR, who shall decide the question of entering a protest to one or both rulings under ex officio review procedure**. (Resolutions of the Plenary Session of the Supreme Court USSR of 10 February 1930 and 22 August 1940, No 30/18/V, as subsequently amended)

**See Section 2 of annotation on Subdivision 1 of Chapter XXIX (Sections 409--426).

2. In the precise sense of Sections 113-117 of the USSR Constitution and the "Statute on the Office of the Prosecutor USSR" (USSR Laws 1934, Law No 26**), agencies of the Office of the Prosecutor are organized and operate on the basis of strict centralization and subordination. The filing by a prosecutor of a protest seeking modification or quashing of a judgment represents under these circumstances a procedural act issuing not from the prosecutor as an individual but as a representative of the Office of the Prosecutor, a unified and centralized institution. In view of the foregoing, an order issued by a superior prosecutor must be executed by the prosecutor who filed the protest. Therefore, a superior prosecutor's order to withdraw a protest seeking modification or quashing of a judgment prior to the judicial session in which it will be considered, in that it deprives the subordinate prosecutor of the right to support such a protest in court, shall be regarded as constituting withdrawal of the protest, and, in accordance with Section 411 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics, an appellate court may not consider such a protest.

**The "Statute on the Office of the Prosecutor USSR" was rescinded by the ukase of the Presidium, Supreme Soviet USSR of 13 July 1955 (Vedomosti Verkhovnogo Soveta SSSR 1955, Law No 288); see Section 26 of the "Statute on Supervision by Prosecutors in the USSR," which was approved by the ukase of the Presidium, Supreme Soviet USSR, of 24 May 1955 (p 126).

If the chairman of a court which has received a protest considers it necessary to do so, he shall have the right in the indicated circumstances to submit to the chairman of the union-republic supreme court or to the chairman of the Supreme Court USSR, as appropriate, a recommendation that a protest be filed under ex officio review procedure, or he himself may enter a protest if this right is granted him by Section 16 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics."** (Resolution of the Plenary Session of the Supreme Court USSR of 10 July 1945, No 10/19/V and of 18 January 1957)

Annotation on Section 412

1. See Section 1 of annotation on Subdivision 1, Chapter XXIX (Sections 409--426).

Annotation on Section 415

1. See Section 1 of annotation on Section 41.

Annotation on Section 416

1. When an appellate court, in reviewing a case under appellate-review procedure, finds that the sentence applies an amnesty to a convicted person to whom the amnesty should not be applied, the appellate court shall overrule the sentence on the basis of Clause b, Section 26 of the "Fundamentals of Criminal Court Procedure of the USSR and of Union Republics" and on the basis of Paragraph 2, Section 416 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics, and shall remand the case for reconsideration by the court of original jurisdiction and designation of measures of punishment without applying the amnesty.

When, however, an appellate court considers that the punishment imposed in the final conclusion of a sentence (i.e., after the amnesty has been applied) is sufficient for the convicted person even without application of the amnesty, the appellate court may affirm the sentence and not remand the case for a new trial, but exclude from the sentence the application of the amnesty and replace the original punishment with that imposed in the final conclusion of the sentence. (Resolution of the 55th Plenary Session of the Supreme Court USSR of 28 July 1936)

Annotation on Section 419-a

1. The courts shall note that when cases are considered under appellate or ex officio review procedure which involve sentences imposing suspended punishment or a punishment lighter than the minimum established by law, the courts shall not have the right to take direct action to replace a suspended sentence with one which must be served or to increase punishment, even up to the minimum level established by law.

If a court considers that there are no grounds for applying to a case Sections 51 and 53 of the RSFSR Criminal Code or the corresponding sections of criminal codes of other union republics, the court, in considering the case under ex officio review procedure or under appellate procedure pursuant to a prosecutor's protest on the grounds cited, may overrule the sentence and remand the case for a new trial.

If there is no protest by a prosecutor, the court which is considering the case under appellate procedure may, while affirming the sentence, point out by interlocutory order to the court which passed the sentence the leniency of the sentence and also make a separate report to the chairman of the union-republic supreme court or to the Chairman of the Supreme Court USSR, who shall decide whether or not to protest the sentence under ex officio review procedure**. (Resolution of the 49th Plenary Session of the USSR Supreme Court of 25 December 1934 and of 13 June 1940, No 16/8/V, as subsequently amended)

**See the resolution of the Plenary Session of the Supreme Court USSR of 10 April 1957, No 4, in annotation on Subdivision 1 of Chapter XXIX (Sections 409--426).

2. In accordance with Section 26 of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union Republics," a court which conducts a second trial of a case referred to it for trial by an appellate court because of the latter's reversal of the first sentence, may increase the punishment imposed by the first sentence only if the sentence was protested by a prosecutor. Therefore, if a higher court, in hearing a case under the procedure provided for by Section 15 of the "Law on the Judicial System," concludes that the punishment imposed in the sentence is too lenient, if the sentence was not protested on that basis by a prosecutor the court may not overrule the sentence on grounds of leniency of punishment. When there are no other grounds for overruling it, the higher court shall affirm the sentence and may only point out to the lower court, by interlocutory order, the leniency of its sentence and the court's underestimation of the public danger constituted by the given crime.

In addition, the court may, by separate report, bring the leniency of the punishment in the given sentence to the attention of the chairman of the union-republic supreme court of the Chairman of the Supreme Court USSR, who shall decide whether or not to protest the sentence under ex officio review procedure** (Section 16 of the "Law on the Judicial System"). (Resolution of the Plenary Session of the Supreme Court USSR of 10 February 1940, No 2/1/V)

**See footnote to Section 1 of commentary on Section 419-a.

3. See Section 1 of Commentary on Subdivision 1 of Chapter XXIX (Sections 409--426).

Annotation on Section 420

1. See Section 1 of annotation on Section 44.

Annotation on Section 421

1. (5) In view of the instructive significance for court practice of appellate andex officio review rulings, and in view of the personal responsibility of judges for the rulings passed by them, it is absolutely impermissible to issue such rulings without an opinion (Section 421 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics). (Extract from the resolution of the 47th Plenary Session of the USSR Supreme Court of 7 June 1934)

2. See Section 1 of annotation on Subdivision 1 of Chapter XXIX (Sections 409--426).

Annotation on Section 424

1. See Section 1 of annotation on Subdivision 1 of Chapter XXIX (Sections 409--426).

Annotation on Subdivision 2 of Chapter XXIX (Sections 427--430)

1. See the ukases of the Presidium, Supreme Soviet USSR, of 14 August 1954 "On Forming Presidiums in Supreme Courts of Union and Autonomous Republics, in Kray and Oblast Courts, and in Autonomous-Oblast Courts" and of 25 April 1955 "On Procedure for the Review of Cases by Presidiums of Courts," pp 118-121.

Annotation on Section 437

1. If a ruling of an appellate court has already been executed, or if the question is raised of leaving in force a measure of social defense established by sentence of a court of original jurisdiction and mitigated by ruling of an appellate court, in both cases, in accordance with Section 28 of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union Republics," if a protest is sustained under ex officio review procedure, the ruling of the appellate court shall be overruled and the case shall be returned for a new trial in the same court by a different panel of judges. (Resolution of the 20th Plenary Session of the Supreme Court USSR of 11 May 1928)

2. If, in considering a case under ex officio review procedure, a court concludes that the measure of social defense imposed in the sentence is not in accord with the character and degree of danger constituted by the criminal and the crime committed by him, it may, on the basis of Section 28 of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union Republics" overrule the sentence and remand the case for a new trial, but it may not directly increase the punishment imposed. The court of original jurisdiction which tries again on the merits a case, the sentence in which was overruled under ex officio review procedure, shall have the right to increase the measure of social defense originally imposed. (Resolution of the 33d Plenary Session of the Supreme Court USSR of 10 May 1931)

Annotation on Section 454

1. In rendering sentences imposing confinement, the courts shall most carefully consider the question of selecting the necessary measures to prevent evasion of justice before the sentence becomes final and executive, and shall apply confinement for this purpose in all cases when the crime is of great importance or when there are grounds to suppose that the convicted person may evade serving his sentence to confinement after it becomes final and executive (Sections 341 and 147 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics).

The judge presiding over a case in the court of original jurisdiction shall be responsible for seeing that the sentence is executed as soon as it becomes final and executive, if it has not been suspended by the proper superior court.

If circumstances not the fault of the judge arise to prevent execution of a sentence (refusal by a place of confinement to accept the convicted person, etc.), the court shall immediately notify the prosecutor responsible for supervising the place of confinement of the fact. (Extract from the directive letter of the Supreme Court USSR of 4 February 1935, No 4, edition of 17 September 1954)

2. The call-up of a person sentenced to corrective labor work for service in the Soviet Army or Navy shall be considered a circumstance preventing execution of the sentence. At the same time, postponement of execution of a sentence in these circumstances, until the completion of military service is, in view of the nature of the punishment, clearly inexpedient in terms of Section 8 of the RSFSR Criminal Code and corresponding sections of criminal codes and criminal procedural codes of other union republics.

It is therefore pointed out to the courts that persons sentenced to corrective labor work who are called up for service in the Soviet Army or Navy shall be relieved of serving their sentences from the day of their call-up, to which effect the court which passed the sentence shall, without

summoning the convicted person, issue a ruling by analogy with Section 461 of the RSFSR Criminal Procedural Code and with the corresponding sections of criminal procedural codes of other union republics.

All cases which have been received in court but not tried, which involve persons who have been called up for service in the Soviet Army or Navy and which involve crimes for which the law provides no punishment more severe than corrective labor work, shall be subject on these grounds to dismissal in preparatory executive session of the court. (Resolution of the Plenary Session of the Supreme Court USSR of 31 October 1940, No 41/21/V and of 12 June 1942, No 23/9/V, as amended)

3. (1) When persons who have been awarded orders and medals are arrested, the orders, medals, and accompanying documents taken from them by investigative agencies shall, along with other valuables, be deposited for safekeeping with the financial office of the place of confinement in which the arrested person is kept, until a final decision has been made on his case.

(2) If the case is dismissed or if the court pronounces a sentence of acquittal, such orders, medals, and documents shall be returned to the owner by the administration of the place of confinement.

(3) In rendering a sentence of conviction, if the convicted person is not deprived of his awards by the court sentence and if the court does not consider it expedient to propose to the Presidium, Supreme Soviet USSR, that he be deprived of his awards, the orders, medals, and documents and other valuables taken from the convicted person shall be sent to the place in which he is to serve his punishment and shall be returned by the administration of the place of confinement to the owner when he is released from custody.

(4) In convicting persons of serious crimes, when the convicted persons are deprived of medals by court sentence or when the court recommends to the Presidium of the Supreme Soviet USSR that they be deprived of orders or medals, the orders, medals, and documents shall be sent, with a copy of the sentence, to the Office of the Presidium, Supreme Soviet USSR.

(5) In accordance with the decrees of the Presidium, Supreme Soviet USSR, of 19 October 1946 and 16 March 1950, in sentencing persons who have received awards to confinement and deprivation of rights, as provided for in Clauses a, b, and c, Section 31 of the RSFSR Criminal Code and corresponding sections of criminal codes of other union republics, the courts may, on the basis of Paragraph 2, Section 33 of the RSFSR Criminal Code and corresponding sections of criminal codes of other union republics, deprive such convicted persons of the following medals in their sentences: For the Defense of Leningrad, For the Defense of Odessa, For the Defense of Sevastopol, For the Defense of Stalingrad, For the Defense of Moscow, For

the Defense of the Caucasus, For the Defense of the Soviet Polar Region, For Victory over Germany in the Great Patriotic War of 1941-1945, For Valiant Labor During the Great Patriotic War of 1941-1945, For Victory over Japan, For the Capture of Budapest, For the Capture of Koenigsberg, For the Capture of Vienna, For the Capture of Berlin, For the Liberation of Belgrade, For the Liberation of Warsaw, For the Liberation of Prague, For Restoration of the Donbas Coal Mines, In Commemoration of the 800th Anniversary of Moscow, 30th Anniversary of the Soviet Army and Navy, and For Restoration of Ferrous Metallurgical Enterprises in the South.

Convicted persons shall be deprived of orders and of all other medals only by the Presidium, Supreme Soviet USSR. (Letter of the Ministry of Justice USSR of 7 May 1955, No P-14)

4. (4) In imposing supplementary punishment in the form of confiscation of property, the courts shall specify precisely the amount to be confiscated to avoid confusion or doubt in the execution the sentences.

In particular, if a court resolves to confiscate a part of property, the sentence shall specify precisely what part (one half, one third, etc.) of the total property of the convicted person is subject to confiscation, or it shall specifically list the articles to be confiscated. In the latter case it shall not be permissible to replace the confiscation of property with a sum of money equal to the value of the property.

The courts should bear in mind that in confiscating all the property of a convicted person, the confiscation, in accordance with Section 40 of the RSFSR Criminal Code and corresponding sections of criminal codes of other union republics, shall apply to the personal property of the convicted person and to his share of common property, and shall not be applied to the shares of other persons who own the property jointly with the convicted person. In confiscating property, courts shall take into consideration the rights and legitimate interests of members of the convicted person's family who live with him.

(5) If property is attached during pretrial investigation under Section 121-a of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics, the court trying the case shall verify whether or not the requirements of Section 25-1 of the "Basic Principles of Criminal Legislation of the USSR and of Union Republics" have been observed concerning property not subject to confiscation, and if such property is listed, the court must issue a ruling to strike it from the list and raise the attachment on it.

(6) Courts shall verify whether or not the listed property actually belongs to the person committed for trial, and when there are facts indicating that property not belonging to the person committed for trial has been attached, if there is no dispute over the ownership of the property, the court shall issue a ruling striking such property from the list,

raising the attachment on it, and returning it to the rightful owner by analogy with Sections 69 and 331 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics.

(7) The courts shall note that only that property can be confiscated which belongs to the person committed for trial personally or is his share in joint property at the time the sentence is passed.

If, after execution of a sentence to confiscation of all property, there is discovered unconfiscated property belonging to the person committed for trial acquired by him before the sentence was pronounced, or even afterwards if acquired with funds subject to confiscation pursuant to the sentence, the court which passed the sentence or the court at the place the sentence was executed shall, on the motion of a prosecutor, issue a ruling that the property found be confiscated, if the latter can legally be confiscated.

(8) In executing sentences which exact from the convicted person compensation for material damage inflicted by his crime, in addition to confiscation of property, the compensation for damage shall be exacted first and the confiscation applied to the remaining portion of the property if that property can legally be confiscated.

(11) The attention of the courts is drawn to the fact that they must exercise constant supervision over the activity of court bailiffs in the execution of that part of sentences dealing with the confiscation of property. In connection with this, be it established that inventories of property to be confiscated drawn up by court bailiffs shall be subject to confirmation by the people's judge within whose jurisdiction the part of the sentence requiring confiscation is to be implemented.

All appeals against incorrect execution of those parts of sentences dealing with the confiscation of property, and all doubts and questions which arise in that regard which are not connected with the institution of a civil suit, shall be decided by the court which passed the sentence or by the court having jurisdiction over the place where the sentence is to be executed, according to the procedure provided for in Sections 461 and 462 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics.

(12) It is pointed out to the courts that if a higher court excludes the confiscation of property from a sentence, the court which passed the sentence must, on receiving the ruling of the higher court, without regard to the request of the convicted person, forward to the financial agency which received the confiscated property a copy of the ruling for execution, i.e., for return of the property or payment of compensation for its value.

The return of property or payment of compensation for its value shall be effected in accordance with the provisions of the "Statute on Procedure for Accounting For and Using Nationalized, Confiscated, Escheated, and Ownerless Property," confirmed by decree of the Sovnarkom USSR of 17 April 1943 and the Instruction of the People's Commissariat of Finance USSR of 31 May 1943.**

**The Instruction of the People's Commissariat of Finance USSR of 31 May 1943 is no longer in force. See the instruction of the Ministry of Finance USSR of 30 January 1956, No 35, "On Procedure for Accounting For and Using Confiscated, Ownerless, and Escheated Property."

The same procedure shall be followed in returning property paying compensation for its value when a subsequent court decision strikes from the list property already confiscated in execution of a sentence which has become final and effective.

(13) It is explained to courts that when a convicted person is completely relieved of punishment by an act of amnesty, the amnesty shall apply to confiscation of property if the sentence to that effect has not been executed by the day on which the amnesty was issued, i.e., if the property subject to confiscation has not been confiscated.

(14) The attention of the higher courts, and particularly the supreme courts of union republics, is drawn to the fact that in hearing cases under appellate or ex officio review procedure, they must carefully verify whether confiscation of property was correctly applied and whether violations of law occurred in drawing up inventories in attaching the property, or in executing the part of sentences involving confiscation, and that they must take the necessary steps to protect the interests of the state and to restore the rights of citizens which have been violated. (Extract from the resolution of the Plenary Session of the Supreme Court USSR of 29 September 1953, No 7)

5. (1) Articles made of precious metals, precious stones, and pearls, and precious stones, gold, silver, platinum and platinum-alloy bullion, coins of prerevolutionary Russian mintage, and foreign exchange confiscated from citizens by order of investigative agencies and subject to confiscation on the basis of court sentences shall be kept until the sentences become final and executive by the appropriate investigative or judicial organ or shall be deposited by them in sealed packages for temporary safekeeping in institutions of the State Bank.

(2) Sums of money in Soviet currency, USSR state loan bonds, savings and deposit books, savings bank letters of credit, and receipts issued by savings banks on receiving state loan bonds for safekeeping, which are taken from citizens by order of investigative agencies or on the basis of a court sentence, shall be kept as follows until the sentence becomes final and executive:

a. Sums of money in Soviet currency and USSR state loan bonds shall be kept in institutions of the State Bank on deposit by the agency which conducted the seizure of the money or bonds;

b. Savings and deposit books, letters of credit, and safe deposit receipts shall be kept by the investigative or judicial organ which issued the order to attach the deposits, certificates, and bonds on deposit in the savings bank.

At the time savings and deposit books and safe deposit receipts are seized, investigative or judicial organs shall send to the appropriate central savings bank or institution of the State Bank a copy of the resolution (ruling) attaching the deposits or the bonds which are in safekeeping. Notification of attachment of deposits in institutions of the State Bank shall also be sent to the appropriate higher office of the State Bank. Copies of resolutions (rulings) attaching letters of credit shall be sent by investigative or judicial organs to the administrations of the State Labor Savings Bank or the State Credit Bank of the republic, kray, or oblast in whose territory the savings bank which issued the letter of credit is situated.

(3) When investigative agencies submit cases to court, sums of money in Soviet currency and USSR state loan bonds deposited in State Bank institutions for safekeeping shall be transferred by the investigative agencies to the account of the court to which the case is submitted.

Savings and deposit books, letters of credit, and safe deposit receipts shall be submitted to the court with the case.

(4) When a court sentence confiscating the valuables enumerated in Subsection (1) and (2), above, becomes final and executive:

a. Those articles of precious metals, precious stones, and other valuables listed in Subsection (1) shall be entered as a credit item in the Union budget of the Office for Receipt and Distribution of Valuables; the letter of transmission shall note the title of the judicial organ and the date of the sentence providing for confiscation of the property;

b. Soviet currency, the par value of USSR state loan bonds, the amount of premiums which has accrued on the bonds, and the values of deposits, letters of credit, and bonds deposited for safekeeping (Subsection 2) shall be entered as a credit item in the Union budget on the basis of a written order of the agency with which they are deposited or to which they are entrusted for safekeeping, which order shall note that the sentence has become final and executive. A copy of the part of the sentence ordering confiscation of the property, and the savings and deposit books, letters of credit, and safe deposit receipts for state loan bonds, shall be attached to the order.

The order shall be submitted to the appropriate city or rayon financial division at the location of the investigative or judicial organ. Transfers shall be achieved by an inventory citing the number of the savings bank or the name of the State Bank institution which issued the document, the date the document was issued, the family name, given name, and patronymic of its owner, and the amount mentioned in the document.

City and rayon financial divisions shall see to it that savings banks and State Bank institutions correctly and promptly carry out the orders of investigative and judicial organs to credit to state income confiscated deposits, credits, or state loan bonds in their safekeeping. To do so, savings and deposit books and safe deposit receipts issued by savings banks or State Bank institutions in the same city shall be transferred by financial divisions directly to the savings banks, and savings and deposit books and safe deposit receipts issued in other cities and rayons shall be transferred to the appropriate financial divisions at the location of the central savings bank or State Bank facility which issued the documents.

Letters of credit issued by savings banks of the given oblast (kray, republic) shall be submitted by city (rayon) financial divisions to the oblast (kray, republic) administration of the State Labor Savings Bank or the State Credit Bank, and letters of credit issued by savings banks of different oblasts (krays, republics) shall be transferred to the financial division located in the same place as the administration of the State Labor Savings Bank or State Credit Bank, branches of which issued the letters of credit.

Along with the savings or deposit books, letters of credit, and safe deposit receipts, finance organs shall submit the extract from the sentence received from the investigative or judicial organ or a certified copy of the extract to the appropriate savings bank, State Labor Savings Bank administration, State Credit Bank administration, or State Bank institution.

USSR state loan bonds shall be transferred by State Bank institutions on the basis of an order of the investigative or judicial organ together with an extract from the sentence to the local central savings bank according to an inventory citing the title of the loan, the number of bonds, the serial numbers and the par value of each bond, and the family name, given name, and patronymic of the bond owner. A copy of this inventory shall be sent to the financial agency at the location of the savings bank to which the confiscated bonds are transferred.

(5) When a court sentence of conviction without confiscation of property becomes final and executive, or when a sentence of acquittal is pronounced, or when a case is dismissed by investigative or judicial organs, the following procedure shall be followed in returning seized valuables:

A. [Return of Seized Valuables] to Persons Convicted Without Confiscation of Property:

(a) Upon notifying the convicted person of the court sentence and receiving a signed receipt of notification, the agency responsible for executing the sentence shall obtain from the convicted person a power of attorney (affidavit) to transfer to other persons the valuables belonging to him which are listed in Subsections (1) and (2) of this instruction, and at the same time shall submit the resolution (ruling) raising the attachment on the valuables to the appropriate central savings bank where the deposit or bonds are kept or to the appropriate higher office of the State Bank, if the deposit is kept in a State Bank office, or, similarly, to the administration of the State Labor Savings Bank or the State Credit Bank of the oblast (kray, republic) on the territory of which the savings bank which issued the letter or credit is located.

If it is impossible to obtain a power of attorney (affidavit) from the convicted person, the valuables shall be transferred for safekeeping to the place where the convicted person is serving his punishment;

(b) Owners of valuables referred to in Subsection 1 of this instruction shall have the right to receive the valuables belonging to them in their original form within 6 months after they have served their punishment or have been released from custody, whereof they shall be notified and a signed receipt of notification obtained.

If an owner of valuables does not request the return of the valuables in their original form within 6 months, the valuables shall be sent to the Office for Receipt and Distribution of Valuables for conversion into cash.

Valuables shall be liquidated through the Precious Metals Administration of the Ministry of Finance USSR at state trade purchase prices and through the State Bank. The money realized shall be deposited to the account of the agency which is conducting the return.

The owners of valuables may receive this money within 3 years from the date of deposit. After this period has expired, the money realized from the valuables shall be credited to the Union budget;

(c) Seized Soviet currency, USSR state loan bonds, savings and deposit books, letters of credit, and safe deposit receipts shall be subject to return to the owner or to another person under his power of attorney within 3 years, this term not to include the time the person spends in custody.

When the stated 3-year period expires, unrequested sums of money and the face value of seized state loan bonds, along with the accrued premiums on them, shall be credited to the Union budget.

Savings and deposit books and letters of credit and safe deposit receipts shall be transferred to the administration of the State Labor Savings Bank or of the State Credit Bank or to the appropriate office of the State Bank of the oblast (kray, republic) on the territory of which the agency which has custody of these documents is located. Savings and deposit books, letters of credit, and safe deposit receipts received under this procedure shall be destroyed by the administration of the State Labor Savings Bank or the State Credit Bank, or by the State Bank office, and an official record of such destruction shall be made; payment of deposits, credits, and the delivery of bonds in safekeeping to the owners shall be conducted in these cases by the procedure established in the instructions for delivering money and bonds when savings and deposit books, letters of credit, and safe deposit receipts are lost;

(d) If it is impossible to return savings and deposit books, letters of credit, and safe deposit receipts because of the death of the owner and the absence of heirs, these documents shall be transferred to a financial agency under the procedures established for escheated property.

B. [Return of Seized Valuables] to Persons Who Receive Sentences of Acquittal or Whose Cases are Dismissed:

(a) All valuables mentioned in Subsection (1) shall be returned to the owner in the original form, or by virtue of his power of attorney (affidavit) to another person, within a period of 6 months from the day the owner is notified under receipt of the resolution of the investigative agency or court ruling to dismiss the case or of the court's sentence of acquittal.

If an owner of valuables does not request their return within 6 months, the valuables shall be transferred for liquidation by the Office for Receipt and Distribution of Valuables;

(b) Valuables shall be liquidated through the Precious Metals Administration of the Ministry of Finance USSR at the following prices: gold, silver, platinum and platinum-alloy bullion, and coins of pre-Revolutionary Russian mintage at the prices paid by the State Bank for the purchase of these valuables from the public; foreign currency in Soviet currency, at the prevailing exchange rate; precious stones and articles made of precious metals and precious stones, at the state trade purchase prices.

Money realized from the liquidation of valuables shall be deposited by the Precious Metals Administration of the Ministry of Finance USSR to the account of the agency which is returning the money.

An owner may receive this money within 3 years from the date he is notified under receipt of the court sentence of acquittal, or of resolution (ruling) to dismiss the case. When this period has expired, the money realized from liquidation of the valuables shall be credited to the Union budget;

(c) Seized Soviet currency, USSR state loan bonds, savings and deposit books, letters of credit, and safe deposit receipts shall be returned to the owner or, on the basis of his power of attorney (affidavit), to another person within 3 years from the date the owner of the valuables is notified of the court sentence of acquittal or of the resolution (ruling) dismissing the case. At the same time a resolution raising the attachment shall be submitted to the appropriate central savings bank, State Bank institution, State Labor Savings Bank administration, or State Credit Bank administration. The time during which the owner is held in custody shall not be included in the periods established for payment of monies due on letters of credit.

After 3 years, uncollected funds and the face value of seized state loan bonds, together with their accrued premiums, shall be credited to the Union budget.

Savings and deposit books and letters of credit and safe deposit receipts shall be transferred to the administration of the State Labor Savings Bank or the State Credit Bank or to the appropriate office of the State Bank of the oblast (kray, republic) on the territory of which the agency which kept the documents is located. Documents received shall be destroyed by the administration of the State Labor Savings Bank or the State Credit Bank or by the State Bank office and an official record of such destruction shall be made; payment for deposits, credits, and the delivery of bonds in safekeeping to the owners shall be conducted in these cases by the procedure established in the instructions for delivering money and bonds when savings and deposit books, letters of credit, and safe deposit receipts are lost;

(d) If it is not possible to return savings and deposit books, letters of credit, and safe deposit receipts because of the death of the owner and the absence of heirs, these documents shall be transferred to a financial agency under the procedures established for escheated property;

(e) Foreign subjects with exit visas shall receive from the State Bank foreign exchange in the amount established by the Ministry of Finance USSR instruction on the procedure for export of foreign exchange.

(6) When a resolution (ruling) of a judicial organ excludes from a sentence the confiscation of property or overrules a sentence of conviction involving the confiscation of property, the return of the valuables, sums of money, and bonds listed in Subsections (1) and (2) shall be carried out within 6 months from the date the resolution (order) is issued by the court.

The valuables listed in Subsection (1) shall be returned in the original form provided they have not been converted into cash. If these valuables have been liquidated, their owner, or another person according to his power of attorney, shall be paid their value at state trade purchase prices.

Confiscated bonds returned to the state budget shall be replaced by the savings banks with bonds of the same loan but with different serial numbers; premiums accruing to the bonds after the time they are credited to the state budget shall not be paid.

Deposits which have reverted to the state and are returned from the state budget shall be paid to their owners without interest for the time the deposits were not actually held by the savings banks.

(7) The procedure for keeping, returning, and transferring to the state budget valuables seized by customs institutions shall be regulated by the USSR Tariff Code and the instructions of the Ministry of Finance USSR.

(8) The Instruction of the People's Commissariat of Finance USSR "On Procedure for Keeping, Returning, and Transferring to the State Budget Valuables Seized From Citizens by Order of Investigative and Judicial Organs," confirmed by decree of the Sovnarkom USSR of 16 February 1938, No 178, is void. (Instruction of the Ministry of Finance USSR of 10 August 1955, No 598, "On Procedure for Keeping, Returning, and Transferring to the State Budget Valuables Seized From Citizens by Order of Investigative Agencies and Those Confiscated on the Basis of Court Sentences." Issued on the basis of the Order of the Council of Ministers USSR of 3 August 1955)

Annotation on Section 456

1. If a person sentenced to corrective labor work on a general basis is recognized, while he is serving his punishment, to be a disabled person of the first or second group, the court which passed the sentence, or the court at the place where the sentence is being served, may rule as follows, depending on the nature of the disability:

To defer execution of the sentence until the re-examination of the disabled person (Section 456 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics), or

To substitute for corrective labor another form of punishment [also] not connected with confinement (Section 14 of the RSFSR Corrective Labor Code and corresponding sections of corrective labor codes of other union republics), or

To relieve the convicted person of further punishment (by analogy with Section 457 of the RSFSR Criminal Procedural Code and with corresponding sections of criminal procedural codes of other union republics).

Such rulings shall be issued by courts under the procedure provided for by Sections 461 and 462 of the RSFSR Criminal Procedural Code and by corresponding sections of criminal procedural codes of other union republics.

This instruction shall also apply to persons sentenced to corrective labor at the place of employment who have been dismissed from work during the period of their punishment because they were considered to be disabled persons of the first or second group. (Resolution of the Plenary Session of the Supreme Court USSR of 22 July 1949, No 9/5/U)

Annotation on Section 457

1. See Section 1 of the annotation on Section 456.

2. See Section 1 of the annotation on Section 203.

Annotation on Section 458-a

1. See Subsection 4, Section 1 of annotation on Section 458-a.

Annotation on Section 461

1. (1) Be it enacted that cases involving preterm release or release on parole from places of confinement, or involving reduction of the period of punishment in accordance with the ukases of the Presidium, Supreme Soviet USSR, of 24 April 1954 "On Procedure for Preterm Release of Persons Convicted of Crimes Committed Before the Age of 18" and of 14 July 1954 "On Introducing Release on Parole From Places of Confinement" shall be considered on the recommendation of administrations of places of confinement by the union- or autonomous-republic supreme court, or the kray, oblast, or autonomous-oblast court having jurisdiction over the place of confinement of the convicted person, or, when these courts are at a considerable distance, by the nearest people's court.

Such cases which involve persons convicted of counter-revolutionary crimes, murder, banditry, robbery, or major plundering of state and public property shall in all cases be considered by a union- or autonomous-republic supreme court or by a kray, oblast, or autonomous-oblast court.

(2) Recommendations for preterm release or release on parole, or for reducing the term of punishment, shall be considered in judicial session without demanding the court case, with the participation of a prosecutor, a representative of the administration of the place of confinement, and, as a rule, the convicted person being summoned to be present.

(3) In deciding cases involving preterm release, release on parole, or reduction of the term of punishment of persons to whom an amnesty or pardon has been applied, the term of punishment shall be calculated on the basis of the term as reduced by the amnesty or pardon.

(4) In passing a ruling granting preterm release or release on parole, the courts may also relieve the convicted person of supplementary punishments imposed by the sentence, such as exile, banishment, deprivation of rights, and prohibition against occupying a certain position or engaging in a certain activity.**

**After considering cases involving parole of convicted persons or reduction of their terms of punishment, courts shall submit a copy of the ruling to the court which passed the sentence, for attachment to the case. (Order of the Ministry of Justice USSR of 28 July 1955, No 40)

(5) Court rulings granting preterm release or parole or reducing the term of punishment shall not be subject to appeal but may be protested under ex officio review procedure on a general basis.

If a protest is filed under ex officio review procedure, implementation of the parole ruling shall be suspended. (Extract from the ukase of the Presidium, Supreme Soviet USSR, of 21 April 1955 "On Procedure for Consideration by Courts of Cases Involving Preterm Release and Parole From Places of Confinement")

2. The question of applying the ukase of the Presidium, Supreme Soviet USSR, of 10 January 1955 to persons serving punishment for petty plundering of state or public property committed before 10 January 1955 shall be considered by union- or autonomous-republic supreme courts or by kray, oblast, or autonomous-oblast courts at the place where the convicted person is confined, and when these courts are at a great distance, by the nearest people's court on the recommendation of the appropriate prosecutor or judge.

If cases involving persons who committed petty plunder of state or public property before 10 January 1955 are demanded for review under ex officio review procedure, the question of applying the ukase of the Presidium, Supreme Soviet USSR, of 10 January 1955 shall be decided by the court which considers the case under ex officio review procedure. (Extract from the decree of the Presidium, Supreme Soviet USSR, of 24 May 1955)

3. Whenever a sentence condemning a person to perform corrective labor work is overruled and the case is dismissed on the grounds that the elements of a crime are absent or that the evidence does not support the charge, convicted persons who have already served some part of the punishment imposed by the sentence shall be fully reimbursed for the money withheld from their wages while the sentence was being executed.

A court decision to overrule a sentence and dismiss the case shall, in these instances, constitute grounds for returning money withheld.

Doubts and disputes of any sort arising on this question shall be decided under the procedure provided for by Section 461 of the RSFSR Criminal Procedural Code and by corresponding sections of criminal procedural codes of other union republics either by the court which passed the ruling dismissing the case or by the court at the place where the sentence is being executed. (Circular of the People's Commissariat of Justice USSR, the People's Commissariat of Internal Affairs USSR, and the Prosecutor of the USSR of 5 December 1936, No 109. See the letter of the Ministry of Justice USSR of 27 November 1940, No 5A--12/46)

4. In case of malicious evasion of work by persons sentenced to corrective labor work on a general basis, the courts may substitute for corrective labor work confinement for a period not to exceed the period of corrective labor work, acting by analogy with Section 26 of the RSFSR Corrective Labor Code.

Such substitution shall be effected only by the court which passed the sentence, or by a court at the place of execution of the sentence, in accordance with procedure provided for by Sections 461 and 462 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics. (Resolution of the Plenary Session of the Supreme Court USSR of 23 September 1939, as amended on 18 January 1957)

5. Taking into account the fact that, in accordance with Section 3 of the "Fundamentals of Criminal Jurisprudence of the USSR and of Union Republics," the ukase of the Presidium, Supreme Soviet USSR, of 15 February 1957 "On Amending and Supplementing the Statute on Military Crimes" is retroactively effective insofar as it rescinds application of measures of criminal punishment or ameliorates these measures, the Presidium, Supreme Soviet USSR, decrees:

(1) Questions connected with the application of Sections 7, 8, and 10 of the "Statute on Military Crimes" in the edition enacted by the ukase of the Presidium, Supreme Soviet USSR, of 15 February 1957, "On Amending and Supplementing the Statute on Military Crimes," shall be reviewed as follows with regard to cases which arose prior to the issuance of this ukase:

a. By the appropriate investigative or judicial organ -- with regard to persons accused in connection with cases being processed by investigative or judicial organs;

b. By commands of disciplinary battalions and military prosecutors -- with regard to persons serving punishment in disciplinary battalions;

c. By administration of places of confinement -- with regard to privates and sergeants on regular-term service sentenced for desertion under Clause d of Section 193-7 and Clause a of Section 193-10 of the RSFSR Criminal Code and under corresponding sections of criminal codes of other union republics for terms in excess of 5 years and who have served 5 years in confinement. Such persons shall be subject to immediate release from places of confinement;

d. By the nearest military tribunal under procedure provided for by Section 461--462 of the RSFSR Criminal Code and corresponding sections of criminal codes of other union republics, pursuant to the recommendation of administrations of places of confinement and the opinion of a prosecutor -- with regard to all other persons who are serving punishment in places of confinement for the aforementioned crimes. In this connection, persons sentenced under Clause d, Section 193-7 of the RSFSR Criminal Code and under corresponding sections of criminal codes of other union republics for unauthorized leaving of the unit (failure to report on time for duty without sufficient justification) for a period of from one to three days shall, if these crimes were committed without intent to evade military service, be

subject to release from places of confinement. Their criminal records shall be expunged and they shall be placed at the disposition of the rayon military commissariat at the place of residence. The indicated questions, including that of fixing individual measures of punishment in cases of conviction of a plurality of offenses, shall be decided on the basis of documents present in the personal files of prisoners, but, if necessary, the criminal case shall be demanded.

(2) Questions connected with the application of the ukase of 15 February 1957 with regard to persons who are serving punishment in places of confinement for crimes falling under Sections 14-1, 14-2, and 14-3 of the "Statute on Military Crimes" (including the question of release after serving 10 years confinement), shall be decided by the nearest military tribunal in accordance with Sections 461--462 of the RSFSR Criminal Procedural Code and corresponding sections of criminal procedural codes of other union republics. These questions must be decided with the judicial case on hand.

(3) It is explained that Section 4 of the ukase of 15 February 1957 is subject to application both to cases tried by military tribunals after the issuance of the ukase and to cases tried by courts prior to the issuance of the ukase, provided that the part of the sentence providing for confiscation of property has not been executed. (Decree of the Presidium, Supreme Soviet USSR, of 29 March 1957, Vedomosti Verkhovnogo Soveta SSSR 1957, Law No 221.)

6. See Section 2 of annotation on Section 454.

7. See Section 1 of annotation on Section 456.

Annotation on Section 462

1. See Section 1 of annotation on Section 80.

2. See Section 1 of annotation on Section 456.

Annotation on Part 7

On Rescinding the Decree of the Presidium of TsIK USSR dated 1 December 1934 "On Procedure for Conducting Cases Concerning Preparations or Commission of Acts of Terrorism" and the Decrees of TsIK USSR of 1 December 1934 and 14 September 1937 "On Amending the Criminal Procedural Codes of Union Republics Currently in Force"

Ukase of the Presidium, Supreme Soviet USSR, of 19 April 1956 (Vedomosti Verkhovnogo Soveta SSSR 1956, Law No 193)

The Presidium, Supreme Soviet USSR decrees:

The decree of the Presidium of TsIK USSR of 1 December 1934 "On Procedure for Conducting Cases Concerning Preparations for or Commission of Acts of Terrorism" and the decrees of the USSR Central Executive Committee of 1 December 1934 and 14 September 1937 "On Amending the Criminal Procedural Codes of Union Republics Currently in Force," which established esceptional procedures for investigating and trying cases involving the crimes covered by Sections 58-7, 58-8, and 58-9 of the RSFSR Criminal Code and corresponding sections of criminal codes of other union republics, shall be rescinded.

In the future, in investigating and trying cases involving the crimes covered by the sections of criminal codes cited above, investigative agencies andcourts shall be guided by the procedural norms established by union-republic criminal procedural codes.

APPENDIX C. REGULATIONS

On Procedure for Investigating and Trying Cases Involving Crimes Committed by Minors

Order of the People's Commissariat of Justice USSR and the Prosecutor of the USSR of 11 June 1940, No 67/110

(Extract)

1. (1) The most highly trained pretrial investigators shall be entrusted with the pretrial investigation of cases involving crimes committed by minors in the capital cities of union and autonomous republics, in kray and oblast centers, and in other large cities.

(2) In order to strengthen supervision over all investigative agencies and to avoid unfounded and illegal prosecution of minors, the offices of republic, kray, and oblast prosecutors shall appoint assistants to the prosecutor with the duty of exercising supervision over cases involving minors.

(3) Cases involving crimes committed by minors shall be tried in courts no later than 10 days after they are received.

(4) In trying cases involving crimes committed by minors, the courts must summon the parents or guardians of accused minors and representatives of the schools or juvenile institutions in which they are enrolled or are being reared.

(5) Trial of cases involving crimes committed by minors shall not be permitted without the participation of defense counsel.

The courts shall appoint a defense counsel under the procedure provided for by Section 55 of the RSFSR Criminal Procedural Code and by corresponding sections of criminal procedural codes of other union republics; if there is no lawyer in the rayon, representatives of public organizations shall be called to participate in the case as defense counsels.

(6) When offenses constituting a social danger are committed by minors, it must be determined whether such offenses are the result of lack of proper attention to the training of the children on the part of their parents or guardians.

In particularly malicious cases of children being left without supervision, the guilty parents or guardians shall be subjected to criminal prosecution.

(7) Systematic supervision shall be exercised over the precise observance by militia organs of Section 18 of the decree of the Sovnarkhom USSR and the Central Committee of the All-Russian Communist Party of 31 May 1935 on fining parents for the mischief and street hooliganism of their children.

(8) When they discover, during the trial of cases involving crimes committed by minors, shortcomings in the educational work of schools, juvenile institutions, and public organizations, courts shall notify the organization in question of that fact to eliminate the defects discovered.

On Procedure for Restoring the Files of Criminal and Civil Cases Lost in Connection With Wartime Conditions

Order by the People's Commissar of Justice USSR and the Prosecutor of the USSR of 23 May 1942, No 35/175

(Extract)

In the event that civil or criminal case files are lost in connection with wartime conditions, the following provisions shall apply:

1. In the event of loss of the files of a criminal case at the pretrial investigation stage, a prosecutor shall rule on their restoration.

2. If the files of a criminal case submitted to court but not tried are lost, the court shall issue a ruling on suspending the trial and restoring the case file.

3. Case files shall be restored by a prosecutor's office at the place where the crime was committed or at the place where the defendant is located.

4. When it is impossible to restore the case files referred to in Sections 1 and 2, these cases shall be suspended and the court or the prosecutor, as appropriate, shall discuss the question of imposing a measure to prevent evasion of justice and of issuing a ruling (resolution) to that end. When necessary, the court or prosecutor shall order the case dismissed.

5. If a lost criminal case is restored in part, courts may try the case on the merits if they consider the material at hand sufficient for the trial.

7. When the files of a criminal or civil case, on which a sentence or decision has been passed but has not become final and executive, is lost, the appellate court (at the place where the defendant is located) may consider ar appeal or protest and rule on it if that is possible without restoring the case file.

If it is not possible to rule on an appeal or protest without restoring the case file, and if the sentence or decision on the case is lost and certified copies do not exist, the court shall rule as follows: in criminal cases, to restore the file on the case; in civil cases, to suspend execution of the court decision until the court decides how to treat the case.

If it is not possible to restore a criminal case file, the appellate court shall suspend execution of the sentence and at the same time decide the question of imposing a measure to prevent evasion of justice, or when necessary shall dismiss the case.

8. If the files of a civil or criminal case on which the sentence or decision has become final and executive are lost, the sentence, decision, or ruling on the case, upon protest by one of the persons mentioned in Section 16 of the "Law on the Judicial System"**, may be overruled or modified by the court under ex officio review procedure, if it is clear that the sentence, decision, or ruling is unfounded from its very content or from the material presented by the parties or from other material.

** See footnote to Section 16 of the "Law on the Judicial System of the USSR and of Union and Autonomous Republics," p 104.

When necessary, upon protest by these persons, the court may rule under ex officio review procedure to restore the file on the case, and, if it is impossible to restore the file, to suspend execution of the sentence or decision or dismiss the case.

Instructions on Procedure for Restoring Lost, Destroyed or Plundered Files of Court Cases

Circular of the People's Commissariat of Justice RSFSR No 9 of 6 January 1925

1. The following provisions shall govern the restoration of case files which have been destroyed or plundered.

2. The files of civil cases, and of criminal cases covered by Section 10 of the Criminal Procedure Code, shall be restored only by statement of the parties or on demand of a prosecutor's office. Instead of petitions to reinstitute a case, plaintiffs or injured parties may file new suits or statements. A court, however, on the motion of an accused person or defendant, may reject the new case and recognize the necessity of restoring the lost file of the original case.

3. The files of all other criminal cases shall be obligatorily subject to restoration, with the exception of those specified below.

4. Criminal cases shall not be reinstituted if the agency conducting the proceedings finds that the case in question should have been dismissed under the provisions of Sections 4 and 202 of the Criminal Procedural Code; in these cases the agency shall issue an appropriate explanatory ruling, being guided by the provisions of Sections 95, 105, 203, 222, 233, and 236 -- 238 of the Criminal Procedural Code. The question of not reinstituting (dismissing) a case shall be considered by the court after notifying the prosecutor, whose failure to appear shall not bar consideration of the question. Orders and rulings not to reinstitute (to dismiss) cases may be appealed under generally established procedures.

5. The restoration of files in cases on which sentences or decisions have been rendered but have not become final and executive shall be effected at the discretion of the appellate court, if the sentence or decision is appealed, but only if the court, after familiarizing itself with the appeal or protest -- if it has been preserved, or after a new appeal or protest has been received -- considers it necessary for the hearing of the case.

6. The restoration of files in cases on which sentences or decisions have become final and executive may be effected by the court which rendered the sentence or decision only to the extent of restoring the sentence or ruling, but the higher courts shall be granted the right, in exceptional cases, to recognize the necessity of restoring files in such cases either in part or in whole.

7. Judicial and pretrial investigation organs and police inquiry agencies shall, in restoring case files, take every possible measure to collect the necessary material, and they shall particularly instruct the parties of the necessity of their giving certain information to make it easier to issue the proper certificates and obtain the necessary documents, information, etc. from other institutions.

8. Statements of interested parties (Section 2 of this instruction) shall contain detailed information which the declarants have with regard to cases and shall have appended to them all documents, copies, etc. bearing on the case. A person giving false evidence in statements shall be punished in accordance with Section 95 of the Criminal Code.

9. The following materials shall be used for restoring files of cases: the available portion of the record of the proceedings (if the case file was not completely lost); copies of documents and papers in the case, even if they have not been certified by established procedure; information from other institutions; etc. When necessary, all persons who were present during judicial or investigative proceedings may be questioned as witnesses, including in exceptional cases even persons who conducted the police inquiry, pretrial investigation, or verification of evidence in civil cases, or who were members of the court which tried the case, provided, however, that these persons shall be disqualified from further participation in the case.

10. All the materials for restoring case files referred to shall be subject to liberal evaluation by the agencies which carry out the restoration and by those who subsequently consider the case.

11. If the appropriate judicial or investigative agency exhausts all means for restoring a case file and the material collected is inadequate, it may resort to repeating the investigative and judicial actions already effected, insofar as this is necessary to advance the case (police inquiry, pretrial investigation, verification of the evidence in civil cases, interrogation of witnesses, rendering of expert opinions, inspection on the spot, and trial of the case in court).

12. Judicial sessions may be certified under the procedure provided by Section 112 of the Civil Procedural Code and Section 31 of the Criminal Procedural Code, in the latter case in conformity with the explanation of the Plenary Session of the Supreme Court of 7 April 1924 (Sovetskaya Yustitsiya [Soviet Jurisprudence], No 18).

13. Sentences, decisions, rulings, and resolutions of judicial and investigative organs may also be restored upon the memory of officials or the members of the court which passed them. Drafts of restored sentences or decisions shall be brought before a judicial session, to which the parties and a prosecutor shall be summoned and in which the draft, after being studied and supplemented with such data as is put forward and after the explanations of the parties and the opinion of the prosecutor have been heard, shall either be confirmed, revised, or rejected. These sentences and rulings may be appealed under the regular procedure to the proper court.

14. Parties who have failed to meet a time limit on a case because of the loss of the record of the case shall be granted an extension of the period under Section 87 of the Criminal Procedural Code or Section 62 of the Civil Procedural Code.

15. Fees charged the parties in connection with a case the file on which has been lost shall not be charged again when a case is reinstituted, and this fact shall be noted in the record of the case or in some other document, copy, etc. by the court which conducted the restoration of the case file.

I N D E X

This index covers the serially numbered sections of the RSFSR Criminal Procedural Code, 1957 edition, and its first two appendixes.

The abbreviation "Sec," followed by a number or numbers, designates one or more of the consecutively numbered sections comprising the text of the code. If the numbers are in parentheses, numbered items in the appended "Annotations on Sections of the Code" (each annotation has the same number as the section of the code to which it relates).

The abbreviation "p," followed by a number or numbers, refers to one or more pages in the appended "Legislative Acts."

A

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